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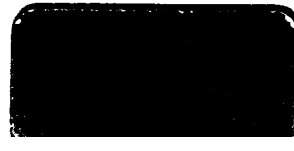

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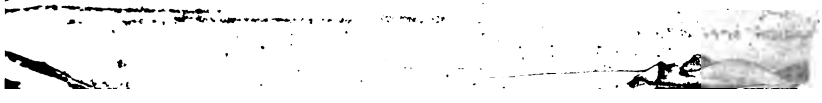

CASE

BETWEEN

SIR WILLIAM CLAYTON, BART.

AND THE

DUCHY OF CORNWALL.

LONDON:

PRINTED BY J. BETTS, 7, COMPTON STREET, BRUNSWICK SQUARE.

1834.

PREFACE.

THE following pages contain a brief statement of the case between Sir William Clayton and the Duchy of Cornwall. The Acts of Parliament relating to the constitution, as established by the 21st James 1st., for the purpose of getting the Duchy Lands built upon and improved at the tenants' expense, and for providing a revenue for the Duchy, to arise by fines to be taken on renewals, commensurate with the tenants' income, arising from the improvements made, and what I have thrown into the shape of an opinion at the end, have been written and compiled by me for the exclusive use of the Counsel and Solicitors employed on the part of Sir William Clayton, and of those Honorable and Patriotic Members of the House of Commons (of whom I hope there may be many in this reformed Parliament) who will become the willing advocates of the cause of justice, and protect those numerous persons who are now painfully suffering under the greatest tyranny and oppression; and, in the hope that my humble endeavours to shew this case in its true light and in its proper colours, may assist the advocates of Sir William Clayton, and may be of some service towards saving many hundreds of families from ruin, I have only to lament being obliged, for want of time, to send it to the press in its rough state, sheet by sheet, and which, I hope, will plead my excuse for any repetition of the same observation, incorrectness of language or expression.

J. H.

CASE.

Sir William Clayton, Bart., and his ancestors, and those under whom they claim, have, from the year 1660 to the year 1777, held, under the constitution of the Duchy of Cornwall, as established by an Act of Parliament of 21st James, A.D. 1623, an Estate at Kennington, in the Parish of Lambeth, in the County of Surrey, consisting of eighty-six acres of land, on a Lease of thirty-one years: first, at a rent of £50. to which it had been improperly increased at the restoration of Charles 2nd., but which was, in an Act which followed afterwards, reduced to an ancient rent of £16. 10*s*. 9*d*., which has been constantly paid, and which Lease has ever been renewed on a fine payable about every ten years, four months, calculated generally at one and a half year's gross rent, in the same manner as fines on Copyholds of Inheritance, held under the Duchy as Lords of the Manor of Kennington, and of which this Estate seems to have been formerly a part, are calculated: the amount of three such fines having been taken during the course of thirty-one years. The Estate is described to have been part or parcel of the Lands belonging to the Lord of the Manor of Kennington, and was thus held and renewed from time to time, as occasion required; sometimes by surrendering the existing term, and taking a new Lease for thirty-one years, and, at other times, by taking a Lease in reversion, which, with the term in possession, made up the thirty-one years, but never exceeded that period, and which mode of renewal is agreeably to the terms of the constitution established by 21st James 1st., and handed down by subsequent Acts of Parlia-

ment, to the 16th George 3rd., 1776, under which our present Letters Patent are granted.

In 1777, a building speculation suggested itself, and Sir William Clayton's father applied to the Surveyor of the Duchy to assist him in the undertaking. He did so—and application was made to the Lords of the Treasury to exchange the thirty-one years' Lease for another description of Lease, warranted by the constitution, viz. a Lease for ninety-nine years, determinable on three lives, in order to enable the grantee to grant out building Leases of sixty-five years to builders and others; but the Estate being then in settlement, it was necessary to get a private Act to enable the tenant for life, under such settlement, (who was restricted from leasing for more than twenty-one years at rack rent) to grant building Leases for sixty-five years, or any term not exceeding ninety-nine years, on ground rents. This Act was also obtained. The new Letters Patent, under which we now hold, were then obtained, (a copy of which you will see bound up with the Acts) for which a fine, calculated as usual, amounting to £468. (the rental being at this time £358.) was taken for ninety-nine years, determinable on three lives. The sub-leases were granted to the builders, Sir William and his father covenanting with their lessees to renew with the Duchy as often as a life dropped, and to grant the sub-lessees fresh Leases; by means of which, and Sir William and his father having raised £6,000 on mortgage of the Estate, for the purpose of paying the expences of the undertaking, the ground, in the course of about ten or twenty years, got covered with building, and the ground rents Sir William now receives for it is £1,268. a year; the actual rack-rent value of the property in the hands of the occupiers is estimated at £23,000. per annum.

One of the lives, George Clayton, Esq., died in 1828, upon

which, application was made to the Duchy to put in a new life, in pursuance of the covenant with the builders; but the Duchy, instead of charging about £1,800. as was expected, have demanded £72,000., on purpose to get possession of the Estate from Sir William, and taking it into their own hands. Since the death of Mr. Clayton, and pending these proceedings, another life has dropped, and another fine is due, and we, of course, expect a repetition of their exorbitant demand. Remonstrances were made with the officers of the Duchy. Petitions were sent to the King—all to no effect, until Sir William was driven to put in his Petition of Right, to which His Majesty has (after many difficulties being thrown in the way) been graciously pleased to order that *right be done*, and the matter is now before the Lord Chancellor, and is expected ultimately to come before Parliament.

The property having become the most valuable the Duchy has, their officers are wanting to get it into their hands, to the ruin of many hundreds of families who are become interested therein, by sub-leases, mortgages, settlements, and otherwise; and the fine is put as a prohibitory fine, for the purpose of effecting their object.

The rent of the property, before this last improvement, was £358. a year, now it is £1,238. on which the fine ought to be calculated, and which we are willing to pay. The Duchy, not content with the very great improvement made to their revenue, want to lay hold of the property itself, notwithstanding such an act of oppression would cause the total ruin of many hundreds of families, whose sole dependence is in reaping the benefit of their outlay and industry, under Sir William, who is left entirely at the mercy of his sub-lessees on his covenants, in confidence of which such outlay has been made, in case no relief can be had.

For the better understanding the constitution established by

the 21st James, it will be necessary, first, to take into consideration the tenure under which the Duchy itself is held, and you will find from the following preliminary Observations, That,—

The Duchy of Cornwall is limited by charter of Edward 3rd, A.D. 1333, to his eldest son Edward (the Black Prince), and his heirs, eldest sons, Kings of England for ever; and in default of such, the Lands are to revert back to the Crown, to be kept until another Duke is extant, to whom the same is given in like manner. (See Gilbert's History of Cornwall, where the Charter is given in full.)

The Dukedom of Cornwall, or rather the Lands belonging thereto, being sometimes in the Duke, at other times in the King, and no power of Leasing being in the Charter; no permanency of interest could be given to the tenants sufficient to encourage them to improve the Land, much less to build houses thereon, and other buildings necessary for its beneficial occupation.

It therefore became necessary, in order to bring all the Lands of the Duchy in the Kingdom into a state of cultivation, that Parliament should take the matter into their consideration, and they devised and concocted a measure, not only to get the Lands built upon and improved, but also to provide and secure to the Duchy a corresponding revenue to arise out of those improvements. See 21st James 1st.

In the year 1610, in the memorial of the great contract delivered in the 7th year of King James 1st, by the Commons to the Lords, mention is made of an intended Patent to be granted to Prince Charles for his benefit, which seems to have been accomplished by the Act of 21st James 1st, 1623, which enables him to take fines on granting renewable Leases of the Duchy Lands. And which Act of James was passed to give to the tenant such an *Estate* and interest in the Land as would encourage him to lay out his money in building upon, manur-

ing, and otherwise improving the same. See Cobbett's Parliamentary History, James 1st, where the Memorial is fully set forth; and this memorial seems to have been intended to quiet persons in the possession of Crown Lands and Duchy Lands, provided they had enjoyed the same for sixty years.

Thus was the measure concocted by Parliament, not only for the purpose of getting the lands improved, but to provide a revenue for the Duchy, which could be done no otherwise than by providing that the Leases should not be made for more than thirty-one years, or three lives, or some term determinable on three lives, in order to *make them renewable Leases,* and to create and keep up a regular succession of revenue to the Duchy by that means.

The Tenant was to have such a good *Estate* in the premises as would be sufficient to encourage him to an outlay of his capital in building upon, and manuring and otherwise improving the Lands. Then what was the estate and interest intended to be given him for this purpose? Is a thirty-one years' term certain sufficient for that purpose?—if not, some larger estate must have been intended—and what was that larger estate, if not a tenant-right of renewal? Now, that a thirty-one years' term certain was *not* sufficient, see the Act 33rd George 3rd, which declares this *not* a sufficient interest even to improve the waste lands, *without* building. How then can it be argued, it *was* sufficient in the time of James 1st, not only to improve the Land, *but to build houses upon it also,* without the tenant-right of renewal being attached?

The three descriptions of Leases authorised by the Act are made for the purpose of securing to the Duchy a revenue by way of compensation or purchase of the tenant-right of renewal; and the Leases are to be considered the machinery or mechanism by which this new tenure is made to work; our title or tenant-right of renewal being derived from the Act, and not from the Leases, which are directed to be made only for thirty-

one years, or under; or for one, two, or three lives, and not above.

If the 21st James had only intended a thirty-one years' term, or three lives certain, this absurdity would have followed:—we should have had a thirty-one years' term in eighty-six acres of land, for £16 10s. 9*d.* a year, and the Duchy would have been without revenue all that time, probably for fifty or sixty years, if the lives lasted so long; therefore it seems quite clear this could have never been the meaning of the Act, but that the Leases were intended to be renewable Leases, and might have been paid for ten years, or one life only.

When this Bill, 21st James, was before the Commons, Mr. Glenville, the then leader of the House of Commons, an eminent lawyer, and who was afterwards Speaker of the House of Commons, observed,—There must be a *perpetual Estate,* or else the Lands would grow barren, and that the law should be so made as that Leases should at all times be made good.—See Journals 21st James 1st.

The recital in the preamble of this Act of 21st James, is to shew the ground for the interference of Parliament for the establishment of a new tenure, by which the tenants should for ever after hold their Lands under the Duchy, and the doubt here spoken of is merged in this tenure.

Parliament had two objects in view,—one to get the Lands built upon and improved at the tenants' expense,—the other to secure a revenue to the Duchy out of those improvements, to arise by fines to be taken on renewals, and the proviso was the only means of effecting that object.

Those words in italics in the preamble of 21st James, would not have been necessary if a thirty-one years' term certain only had been in contemplation; but they are necessary to shew that a larger estate was intended. They shew that the intention of the Act was to give to the tenants a vested interest in

the Lands, in order to encourage them to outlay their capital in building upon and improving the same.

The word *established* shews it to be the commencement of a new tenure. The vested interest is here given the tenants by making good all Leases made, or to be made, against the King, his heirs and successors, against the Duke and his heirs, and against all their successors who should at *any time thereafter* inherit or succeed to the Dukedom, thereby making the Leases perpetual Leases, to continue in force as long as ever the Dukedom stands; provided they were made for no more than thirty-one years, or three lives, at one time, which restrictions were necessary for the creation of, and securing to the Duchy, the revenue intended; but which were never intended to abridge or limit the perpetuity of interest intended to be given. The Lease is only the machinery by which the tenure is made to work. We claim a vested interest under the Act, and the Lease is the means by which the tenants are to enjoy that vested interest; and every expression in the Acts shews that a perpetuity of interest was intended. I now refer the reader to the Observations on the Acts themselves, and to what I have put together in the shape of an Opinion, at the end, by way of getting a more comprehensive view of the subject.

OBSERVATIONS.

When this Bill was before the Commons Mr. Glenville observed, there must be a *Perpetual Estate,* or else the Lands would grow barren; and that the Law should be so made as that Leases should at all times be made good. (See the Journal of the House, 21st James 1st.)

The recital in the preamble of this Act is to shew the ground for the interference of Parliament in the establishment of a new tenure, by which the tenants should for ever after hold their Lands under the Duchy; and the doubt here spoken of is merged in this tenure.

Parliament had two objects in view, one to get the Duchy Lands built upon and improved at the Tenants' expence, the other to secure a revenue to the Duchy out of those improvements, to arise by fines to be taken on renewals.

Those words in italics would not have been necessary if a thirty-one years term only had been in contemplation, but are necessary to shew a larger Estate was intended. They shew the intention of the Act was to give to the Tenants a vested interest in the Lands to encourage them to outlay their capital in building upon and improving the same.

The word *established* shews it to be the commencement of a new tenure.—The vested interest is here given the Tenants by making good all Leases made, or to be made, against the King, his Heirs, and successors, against the Duke and his heirs, and against all their successors, who should inherit or succeed to the Dukedom, thereby making the Leases Perpetual Leases, to continue in force as long as ever the Dukedom or Kingdom stands, under certain restrictions, which were necessary for the creation of, and securing to, the Duchy the revenue intended, And which are set forth in the following proviso, but which were never intended to abridge or limit such vested interest. The Leases are to be good for ever in perpetuity, provided they are not made for more than thirty-one years, or three lives. The Lease is only the machinery by which the tenure is made to work. We claim a vested interest under the Act, and the Lease is the means by which we are to enjoy that vested interest.

The present King succeeds according to the Charter of Edw. 3rd. alluded to; therefore, Leases granted under this Statute of 21st James are good against him; and this shews the right of renewal never dies.

THE STATUTE *by which the Tenant's Right of Renewal was created, being the first Act ever passed relating to the Duchy of Cornwall, and by which a perpetuity of interest is given to the tenants to be had and enjoyed by means of renewable Leases.*

21 James 1st, c. 29, A.D. 1622.

AN ACT to enable the most excellent Prince Charles to make Leases of Lands, parcel of his Highness' Dutchy of Cornwall, or annexed to the same.

IN most humble wise beseecheth your most excellent Majesty, your humble and obedient son and suppliant, Charles Prince of Wales, Duke of Cornwall and of York, and Earl of Chester, THAT whereas your said suppliant is seised of the said Dukedom of Cornwall, and the possessions thereof, of a state of inheritance *under a special form of limitation* differing from the ordinary rules of inheritance of the common law, whereupon some questions do grow whether Leases made by your said suppliant, of any Manors, Lands, Tenements, or Hereditaments, parcel of the said Dutchy, or annexed to the same, should be good and effectual in law longer than your suppliant's life: For avoiding of which doubt, *and to the end such persons as have taken or shall take leases from your suppliant, may be sure to have good estates, and so to be encouraged to bestow charges in the building and maintaining of their Houses and good manuring of the Manors, Lands, Tenements, or Hereditaments so demised, or to be demised to them.*

II. MAY it please your most excellent Majesty that it may be ordained and enacted by your Majesty, the Lords spiritual and temporal, and Commons in this present Parliament assembled; And be it *ordained, established,* and enacted by authority of this present Parliament, That all Leases made or to be made by your said suppliant, of any Manors, Lands, Tenements, or Hereditaments, parcel of the possessions of the said Dutchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and content of the said Leases, against your Majesty, your heirs and successors, and against your said suppliant and his heirs, *and against all and every other person or persons that shall inherit or succeed, according to the said limitation or otherwise.*

This proviso is that part of the measure planned and contrived by Parliament to create and preserve to the Duchy the revenue intended them, and not for limiting the interest of the tenant, who has a perpetual Lease, as mentioned by Mr. Glenville.

Building and improving speculations cannot be carried on or effected unless the tenant or builder has such an Estate as he can sell or mortgage, to raise money for the purpose of building and improvements. What security is a thirty-one years' term certain to offer on mortgage, without the benefit of renewal? Sir William Clayton and his father's trustee were obliged to mortgage to raise money for this purpose: the right of renewal is part of the thing mortgaged. And he sold a term of ninety-nine years, in part of the property, for the same purpose. This observation applies as well in the year 1623, as it does in 1777, as it was the same speculation at one time as the other, and accords with the spirit of all the Acts. *Building and Improvements* being the life and soul of the 21st James, and all the subsequent Acts, and is infused into the very Letters Patent themselves.

"ANCIENT RENT"—shews the Leases to be renewable, or we should have had a thirty-one years' Lease certain of eighty-six acres of Land, at £.16 10*s.* 9*d.* a year, and the Duchy would have been without revenue during that period.—Could this have been the intention of the Act?

"WORDS, &c."—Mark this distinction from the words, purport and intent.

The fee rests in the King or Duke, who has the contingent reversion, dependant on the neglect of the tenant renewing, in which case he would forfeit his interest, the same as a Copyholder in fee would forfeit his Copyhold, for not coming into Court to be admitted.

"OTHER THAN YOUR MAJESTY, &c."—Does not this infer that his Majesty and the Dukes had given up all their right in the Estate to the tenant, so far as the surface of the Lands went?

If a thirty-one year, or three lives certain, was all the interest intended to be given to the tenant to encourage him to build upon and improve the Lands, How happened it that the Acts make no provision for Covenants to be introduced into such Leases, to compel the tenants to build upon and improve the same? Was this the way to get the Lands improved? Does it not shew the Lands become the property of the tenants immediately he took his Lease.

III. PROVIDED always, that every such Lease so made, or to be made of any Manors, Lands, Tenements, or Hereditaments in possession, be or shall be made by deed indented, and but for three lives or fewer, or for one and thirty years or under, or some other term of years determinable upon one, two, or three lives, and not above. And if such Leases be made *in reversion*, that then the same, together with the *estates* in possession, do not exceed three lives, or the term of thirty-one years, and not in any wise dispunishable of waste. And so as upon every such Lease be or shall be reserved the *ancient or most usual rent*, or such rent as hath been yielded or paid for the greater part of twenty years next before the making of the said Leases, and was or shall be reserved due and payable by or to him or her that had or shall have the inheritance or other estate of the said Manors, Lands, Tenements, or Hereditaments. And where no such rent hath been reserved or payable, that then upon every such Lease there be or shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Manors, Lands, Tenements, or Hereditaments contained in such Lease.

IV. AND be it further ordained and enacted by authority of this present Parliament, That all covenants, conditions and reservations, and other agreements contained in every such Lease so made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversion of the same Manors, Lands, Tenements, or Hereditaments shall come, as for and against them to whom the said Leases shall come respectively, as if your suppliant at the time of the making of such covenants, conditions, and reservations, and other agreements, had been seised of an absolute estate in fee simple in the same Manors, Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators, and assigns, (other than your Majesty, your heirs and successors, and other than your suppliant and his heirs, and all and every person and persons that shall inherit or succeed according to the said limitation or otherwise,) all such rights, titles,

Observe, *tenures* are not mentioned here because not yet violated.

What is the consideration which the tenant gives to the Duchy, for the purchase, and in lieu of, the tenant right of renewal?

Ans. 1st. The outlay of his capital in building Dwelling Houses, Barns, Stables, and other farm buildings, necessary for the occupation of the Land to advantage.

2ndly. The great labour and heavy expense in getting Lands, which were in a barren and uncultivated condition, into a state of good cultivation and husbandry.

3rdly. The three fines paid in the course of thirty-one years, calculated on the rent received by the immediate Lessee of the Duchy, from the contractor or tenant, who takes the Land of him for the above purposes, and who has always been protected in the enjoyment of his Under-Lease, by the covenants of the original Lessee, until he had received the advantage of his out-lay. Those fines being calculated at not exceeding two years' rent in ten years and four months, taking three for the thirty-one years, amount to one in five, which, with the expences of the outlay, is much more than a fair compensation given for the purchase of the fee simple of the Estate, independent of the annual rent, and this for the surface only.

To effect this great work of improvement, it was found necessary to grant large tracts of Land to responsible tenants of wealth and property, in order that they might underlet it to others; very many of whom, it may be reasonably supposed, built the Farm Houses and other out-buildings themselves, wholly or in part. The fines on renewal were never calculated but on the rent received by the immediate Lessee, (who had to pay the fine;) and not on the rack rent value, in the hands of the under Lessee, raised by his outlay.

estates, customs, interests, terms, claims, and demands whatsoever, of what kind, nature, or quality soever, of in to or out of the said Manors, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing therein contained to the contrary notwithstanding. *St.* 1. *Car.* 1.

OBSERVATIONS.

Supposing a person had taken a Lease for ten years, or one Life only, under the provision in this Act, without a right of renewal being attached to that Lease, what encouragement could there have been to have built any Houses upon it? Therefore it is manifest, it is the right of renewal only, that could give encouragement to build and improve, and without that right, the Duchy Lands must have remained unimproved to this day—this must be obvious to any person of common sense and understanding.

Supposing again the Lease had been for two years only, which would have been a good Lease under the proviso, would such a term as this have been sufficient to have encouraged the tenant to outlay his capital in building upon, and otherwise improving the land. And such a Lease is made good against all succeeding Kings and Dukes of Cornwall that should at any time thereafter inherit or succeed to the Dukedom. Dont this shew the good estate intended to be given to the tenant was a Lease in perpetuity under certain restrictions necessary to secure a revenue for the Duchy, and that those restrictions were never intended to abridge or narrow the perpetuity of interest intended to be given to the tenant, but merely for the protection of the Revenue of the Duchy, and as the means by which the tenant was to enjoy that perpetuity of interest.

It seems here the Contract was not only for Leases, but Estates.—What other Estate could this have been but the tenants' right of renewal? It is evident that some other interest besides the mere Lease was meant. The tenant has a good Estate, or vested interest in the Lease, which seems to be a Lease in perpetuity. Nothing less would have been sufficient to have compensated the tenant for his outlay. The contracts and Leases are here spoken of as two distinct interests.

"DIVERS FINES."—Prince Charles, it might be easily conceived got a large Revenue by fines taken for Contracts and Leases made and granted under this new tenure.

A change having taken place, it was necessary the Leases should be now made in his character as King, the Duchy Lands having devolved to him in that character (See Charter, Edw. 3rd. 1333.)

"TO BE MADE."—(Speaking prospectively.) It is probable all the old outstanding Leases had, by this time, been surrendered, and that all the old tenants had come in under this new tenure —

The tenure was held out for three years only, to induce persons to come in, and take Leases under it, in order to put the fines into his pocket, during his life, or during his own interest.

1st Charles 1, c. 2, 1625.

AN ACT to enable the King's Majesty to make Leases of Lands, parcel of his Highness' Dutchy of Cornwall, or annexed to the same.

WHEREAS the King our Sovereign Lord being in the life time of his royal father, of blessed memory, seised of the said Dukedom of Cornwall, did bargain and contract for Leases *and estates* to be made of divers Messuages, Lands, Tenements, and Hereditaments, parcel of the said Dukedom of Cornwall, which Leases *and estates* his Majesty was enabled to have made in his father's life time, by an Act of Parliament made in the last session of Parliament, entitled, AN Act to enable the most excellent Prince Charles to make Leases of Lands, parcel of his Highness' Dutchy of Cornwall, or annexed to the same. And because his Majesty *having received divers fines* and sums of money according to the said contracts, and having entered into treaty with divers others for like *estates*, the finishing of which contracts and making the said Leases, was prevented by his Majesty's access to the Imperial Crown of the Realm, is graciously pleased for the good of his poor tenants of the said Dutchy lands, to proceed to the full accomplishment of the Contracts and Leases of the premises.

BE it therefore enacted by our said Sovereign Lord the King, the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of this present Parliament, That all Leases *to be made* within the space of *three years* next ensuing, by our said Sovereign Lord the King, by letters patents, indentures, or other writings under his great seal of England, or seal of the Court of Exchequer, of any Manors, Lands, Tenements, or Hereditaments, parcel of the possessions of the said Dutchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and content of the said Leases against our said Sovereign Lord the King's Majesty, his heirs and successors, and against all and every person or per-

"This word *hereafter*" carries perpetuity in its view. But in order to clear up any doubt, the 22nd Charles 2nd has the words *at any time hereafter*, which effectually prevents their being applicable to a thirty-one years' term certain: so it seems to me.

It was proper the Leases should be so made in order to produce the necessity of renewals, and in order to give to the Duchy the fines on such renewals, without which the Duchy would have been without such revenue; and it is that part of the measure devised by the wisdom of Parliament for the benefit of the Duchy, but not with any intention to affect the perpetual Lease established by the Act.

The reservation being confined to the ancient Rent, shews that the Leases were intended as renewable Leases, otherwise, we should have had a thirty-one years' Lease of eighty-six acres of Land, for the ancient Rent of £16 10s. 9d., and no further revenue could have accrued to the Duchy during that term.

Supposing the Lease had been granted for three lives certain without its being a renewable interest, then we should have had the Estate perhaps for seventy years without paying a single fine to the Duchy. It has so happened that we have now enjoyed it fifty-six years, and Sir. William might perhaps live fourteen years longer, when we shall have enjoyed it that time. I mention this only to prove that many succeeding Kings and Dukes might be kept without revenue if the terms granted were absolute instead of renewable.

Though all the tenants might not be able to improve the Land in an equal degree, yet each one was afforded encouragement by having a vested interest given to him in the perpetual Lease established by the Act, which was the good, fixed, and indefeasible estate intended him, and which was intended to last as long as ever there was a Duke or King to succeed to the Dukedom, and as long as the Dukedom existed, provided it was not made for more than thirty-one years, or three lives.—Our present Lease is made strictly within those provisions, and consequently is a Lease in perpetuity, good against the present King and every Successor to the Duchy for ever, or as long as there is any one to succeed under the limitation.

sons that shall *hereafter* have inherit or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever.

II PROVIDED always that every such Lease *so to be made* of any Manors, Lands, Tenements, or Hereditaments in possession, shall be made but for three lives or fewer, or for thirty one years or under, or some other term of years determinable upon one, two, or three lives, and not above. And if such Leases be made *in reversion*, that then the same, together with the estates in possession, do not exceed three lives, or the term of thirty-one years, and not in any wise dispunishable of waste. And so as upon every such Lease shall be reserved *the ancient or most usual rent*, or such rent as hath been yielded or paid for the greater part of twenty years next before the making of the said Leases and shall be reserved due and payable by or to him or her that shall have the inheritance or other estate of the said Manors, Lands, Tenements, or Hereditaments. And where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under a *twentieth* part of the clear yearly value of the Manors, Lands, Tenements, or Hereditaments contained in such Lease.

AND be it further ordained and enacted by the authority of this present Parliament, That all covenants, conditions, and reservations and other agreements contained in every Lease so *to be made* as aforesaid, shall be good and effectual in law according to the *words* and contents of the same, as well for and against them to whom the reversion of the same Manors, Lands, Tenements, or Hereditaments shall come, as for and against them to whom the said Leases shall come respectively, as if our said Sovereign Lord the King's Majesty at the time of making such covenants, conditions and reservations, and other agreements, were seised of an absolute and indefeizable estate in fee simple in the same Manors, Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, admi-

The Leases made under this Act were the first made under the tenure.

Leases made by Charles I., are good against the present King, which shews them to be renewable in perpetuity.

Tenures are not yet mentioned in the saving Clause, not having been yet infringed upon.

Do not the words "other than our Sovereign Lord the King's Majesty," &c., shew, that all the beneficial ownership of the Lands was abandoned and given up to the tenants, for the purpose of getting the same built upon and improved, reserving to the Duchy only the rent, fines on renewals, and royalties?

Every interest in the surplus of the Lands that the Parliament could give, short of the inheritance, is given, as it appears to me. The larger the interest given the tenants, the more likely was the lands to be got built upon and improved by them, and thus an interest in perpetuity was given them by making all Leases good against all succeeding Kings and Dukes, though under certain restrictions.

Renewals are of necessity made to spring out of the Act, otherwise the Duchy would be without revenue.

The Lease that is given to the tenant is a Lease in perpetuity under certain restrictions. Had it been a Lease only for thirty-one years or three lives, it would have been given by the enacting Clause instead of such perpetual Lease. And provision would have been made to have compelled the tenants to have built upon and improved the Lands.

nistrators and assignees, other than our Sovereign Lord the King's Majesty and his heirs, and all and every person or persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever, All such rights, titles, estates, customs, interests, terms, claims, and demands whatsoever, of what kind, nature, or quality soever, of in to or out of the said Manors, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing therein contained to the contrary, notwithstanding.

PARLIAMENT, as appears by all the Acts, have been very careful to confirm all Leases granted, and have done every thing to give the tenant a good, sure, fixed, and indefeasible Estate in the Lands, for the express purpose of encouraging him to build upon and improve the same.

Is it consistent with any degree of common sense or reason to suppose that such a vast improvement as is here spoken of, could ever have been brought about by a thirty-one years' term certain, without renewal, paying a ground rent yearly, and also three fines during that period, and that without any covenants to compel the tenants so to build upon and improve the Land, or to leave the same in good condition. There is no such provision in the Act, no such covenants in the Leases, which shews the tenant had a fixed Estate to be had and enjoyed by means of renewable Leases, as is acknowledged in the preamble of this Act. The Act 33rd Geo. 3rd says, a thirty-one years' term is not sufficient even to improve waste Lands, without any building. That Act as it seems to me, was intended to destroy the tenant right of renewal, and to break up the tenure, it being passed in violation of all former Acts, which make void all Leases granted otherwise than according to the tenure established by 21 James.

How could the tenants be impoverished, unless they had had a renewable interest in the Land? The Lands were likely to be impoverished for want of some person to renew with. And had the Lease been for thirty-one years certain, they must inevitably have been impoverished, and worn out, without renewals had been attached to the Leases.

All Leases granted or to be granted, are made good against all succeeding Kings and Dukes, therefore, every Lease granted under the tenure, is good against the present King William 4th. Our Letters Patent are granted under the tenure, therefore our Lease is good in perpetuity, being made consistent with the provisions of the Act, and will remain good against his successors as long as the Dukedom exists, as it seems to me.

13th & 14th Charles 2nd, c. 4, A.D. 1660.

AN ACT to enable the King's Majesty to make Leases, Grants, and Copies of Offices, Lands, Tenements, and Hereditaments, parcel of his Highness' Dutchy of Cornwall, or annexed to the same; *and for confirmation of Leases and Grants already made.*

WHEREAS a great part of the Lands part and parcel of or annexed to the Dutchy of Cornwall, have been held by sundry Leases thereof, made for years, and for one, two, and three lives, by means whereof *the tenants having fixed estates have been encouraged to improve and manure the same, and have improved the same, and therein laid out great sums of money in building and otherwise, to the great advantage of the public;* And whereas for twenty years and more now last past, no such Leases have been *legally made,* so that it is probable most of the tenants' *estates* will be determined or near determination ere that there can be any *estates well and legally renewed,* unless remedy therefore be provided by means whereof waste, spoil, and dilapidation are likely to happen, the lands worn out and decayed, and great disturbance and *impoverishment to the tenants.*

II. AND whereas *on the like consideration,* King Charles the 1st was by *special law* enabled to make *such Leases,* Be it enacted by our Sovereign Lord the King, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by authority of the same, That all Leases or Grants *already made or hereafter to be made* within the space of *three years* now next ensuing by our said Sovereign Lord the King, by letters patents, indentures, or other writings under his Great Seal of England, or Seal of the Court of Exchequer, or by copy of Court Roll, according to the customs of the respective Manors, of any Offices, Parks, Lands, Tenements, or Hereditaments, (other than Honors, Lordships, or Manors,) parcel of the possessions of the said Dutchy of Cornwall, or annexed to the

All Acts granted in the time of Charles 2nd, i. e. during the usurpation of Cromwell, and by the King after his restoration, you will see confirmed by 12th and 13th William, 1700, forty years after (see p. 27). This shews they were renewable Leases, or, how could they be confirmed? There seems to be no doubt, but many Leases were granted during Cromwell's usurpation, as it appears by this Act, a vast improvement had been made in the Duchy Property; and therefore it might have been fifty years. And if Leases for thirty-one years certain, had not been renewable, of course they would have expired twenty years before that Act. I think a more convincing proof of the fact of its being a renewable interest, cannot be.

"Or more."—This was considered a violation of the tenure, of which the tenants complained, and the grievance was remedied. It was done at the time every arbitrary method was used to raise King Charles money on his restoration.

"Fourth Part."—This was another small deviation from the original tenure, but was corrected in all future Acts. It serves to shew that Parliament kept close to the original tenure given by James, though this was another part of the same arbitrary method to extort money from the subject.

It is observable, the Covenants are to be good, according to their words and content:—Whereas, the Leases are to be good, according to their purport and content; which I take to be for the purpose and intention for which they were made, i. e. as renewable Leases: this distinction may be of use to observe upon.

same, shall be good and effectual in law, according to the purport and contents of the said Leases, Grants, and Copies against our Sovereign Lord the *King's Majesty, his heirs and successors, and against all and every person or persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament, or other limitation whatsoever.*

PROVIDED always that every such Lease so *to be made*, of any Parks, Lands, Tenements, or Hereditaments in possession, shall be made but for three lives or fewer, or for thirty-one years or under, or some other term of years, determinable upon one, two, or three lives, and not above. And if such Leases be made *in reversion*, that then the same, together with the estates in possession, do not exceed three lives, or the term of thirty-one years, and not in any wise dispunishable of waste, and so as upon every such Lease shall be reserved the ancient or most usual rent, *or more*. Or such rent as hath been yielded or paid for the greater part of twenty years next before the making of the said Leases, and shall be reserved due and payable by or to him or her that shall have the inheritance or other estate of the said Parks, Lands, Tenements, or Hereditaments, and where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under the *fourth* part of the clear yearly value of the Parks, Lands, Tenements, or Hereditaments contained in such Lease.

IV. AND be it further ordained and enacted by the authority of this present Parliament, that all covenants, conditions, and reservations, and other agreements contained in every Lease, Grant, or Copy heretofore made, or *hereafter* so to be made as aforesaid, shall be good and effectual in law, according to the words and contents of the same, as well for and against them to whom the reversion of the same Lands, Tenements, or Hereditaments shall come, as for and against them to whom the interest of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty, at the time of the making of such covenants, conditions, and reservations, and other agreements, were seised of an absolute indefeizable estate in fee simple, in the same Lands, Tenements, or Hereditaments.

OBSERVATIONS.

The word *tenure* is not yet introduced, but the violation is complained of in the next Act, which was as soon as it could be complained of. And this shews that the holding was considered a tenure. And the word introduced to secure the tenants from any further violation in this respect. (See next Act.)

Saving always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators, and assigns, (other than our said Sovereign Lord the King's Majesty and his heirs, and all and every person and persons that shall hereafter have, inherit, or enjoy the said Dutchy of Cornwall by force of any Act of Parliament or other limitation whatsoever, all such rights, titles, estates, customs, interests, terms, claims and demands whatsoever, of what kind, nature, or quality whatsoever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing therein contained to the contrary notwithstanding.

OBSERVATIONS.

This, and all the subsequent Acts down to 16th Geo. 3rd, both inclusive, declare all other Leases granted, or to be granted, otherwise than under the Rules of 21st James 1st, as originally established, to be *null and void.*

Desired to be renewed.
Here is an exercise by the tenants of their *right* of renewal, admitted by the Legislature: and the complaint of the violation of their tenure is remedied.

An admission of the Lands being the property of the tenants, held under the Duchy—and this admission is in all the Acts, from the 22nd Chas. 2nd down to the 12th Anne inclusive—and is in unison with a vested interest.

The Lands are the lands of Sir Wm. Clayton, held under the Duchy —they are not the Lands of the Duchy, who have only a limited interest, so far as their ancient rent—fines on renewal—royalties and growth of timber—goes, and which is all they ever enjoyed since 21 James I.

"THREE YEARS"—Tenure held out for another 3 years.

COPYHOLDERS comprised under the same tenure, if they chose to come in under it—but no compulsion: the fine on admission—on death—or alienation, never exceeds 2 years' rent the Copyholder receives—and is never calculated on the rack-rent value of the property.—Why then should the Leasehold, since the Leasehold is described as part of the lands belonging to the Lord of the Manor of Kennington.

22nd Charles 2, c. 7, A.D. 1669.

AN ACT to enable the King's Majesty to make Leases, Grants, and Copies of Offices, Lands, Tenements, and Hereditaments, parcel of his Highness' Dutchy of Cornwall, or annexed to the same.

WHEREAS many of the Lands belonging to the Dutchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years determinable upon one, two, or three lives, and others for thirty-one years or under, *which Leases are desired to be renewed by many of the said tenants,* And whereas of late years divers *increased* rents have been reserved as well upon the said leased Lands as upon many copyhold Estates of the said Dutchy *for the improvement of that revenue,* whereof the *tenants have complained* to the King's Majesty, who is graciously pleased that they may compound with his officers for the discharge of the said increased rents, and be restored to the *old* rents formerly paid *for their respective Tenements and Lands.* Now to the end the same may be accordingly effected, and the said tenants may be encouraged to *renew their Leases and Estates,* and thereby the better enabled to repair *their* houses and provide for *their* families, and to improve *their Lands holden of the said Dutchy.*

II. BE it enacted by the King's most excellent Majesty by and and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all grants *made or to be made* by copy of Court Roll, according to the custom of the respective Manors or Manor of the said Dutchy, or thereunto annexed or belonging, and all Leases and Grants made or to be made within *three years* next ensuing by our said Sovereign Lord the King, by letters patent or indentures under the great seal of England, or the seal of the Court of Exchequer, of any Offices, Parks, Lands, Tenements, or Hereditaments, other than Honors, Lordships, or

OBSERVATIONS.

MANORS are now not allowed to be leased.—In our former Letters Patent, the tenant was confined to plant so many young trees every year—this—to preserve the Manorial Rights to the Duchy.

At any time "HEREAFTER" having perpetuity in view.—
The Leases to the tenant are here made good against all persons who should at any time thereafter inherit the Duchy, to prevent those words being confined to the 31 years' term, and to shew the perpetuity of interest intended.

The tenants were never to have a larger Estate than a 31 years' term or 3 lives, at one and the same time; but, then they were always to have that interest in themselves, by giving them power to renew, which is the mechanism of the Act. Because it answers as well the interest of the Duchy by being the means by which they are to come at their Revenue, as the interest of the tenant in affording him the means by which he is to have and enjoy that perpetuity of interest given him.

THE ancient rent was to be thus ascertained and fixed—this shews the tenure commenced with 21st James 1st. in 1623.

IF the Lease had been meant for 31 years certain, we should have had 86 Acres of Land, for 31 years certain, at £ 16. 10*s*. 9*d*. per annum, and the Duke or King would have had no Revenue during that period.—Is this reasonable?

"NULL AND VOID"—See how the Legislature keeps close to the original tenure. It is this protects the revenue of the Duchy; it is not for the protection of the tenant this declaration was introduced.

Manors, parcels of the possessions of, or annexed or belonging to, the said Dutchy of Cornwall, shall be *good* and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our said Sovereign Lord the King, his *heirs and successors,* and against all and every other person and persons that shall *at any time hereafter* have, inherit, or enjoy the said Dutchy, by force of any Act of Parliament, or by any other limitation whatsoever.

PROVIDED always that every such Lease or Grant so *made or to be made* shall not be made for more than one, two, or three lives, or for thirty one years or under, or for some term of years determinable upon one, two, or three lives, and not above. And if such Leases or Grants be made in *reversion* or expectancy, that then the same, together with the *estates* in possession, do not exceed three lives, or the term of thirty-one years, and not in any wise dispunishable of waste. And so as upon every such Lease shall be reserved the ancient or most usual rent, *or more,* or such rent as hath been reserved, yielded, or paid for the same Lands for the greater part of twenty years *next before the year of our Lord* 1660, and shall be reserved due or payable to him or her that shall have the inheritance or other estate of the said Dutchy. And where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under a twentieth part of the clear yearly value of the Parks, Lands, Tenements, and Hereditaments contained in such Lease. And all Leases and Grants otherwise *made or to be made shall be null and void.*

AND be it further ordained and enacted by the authority aforesaid, that all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or copy of Court Roll made or to be made as aforesaid, shall be good and effectual in law according to the *words* and contents of the same, as well for and against them to whom the reversion of the same Lands, Tenements, or Hereditaments shall come, as for and against them to whom the interest in the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty, at the

THE word *tenures* is here first introduced into the Saving Clause—the violation of which, seems to have been the subject whereof the tenants complained—and is here introduced to satisfy the tenants that their tenure should be respected in future.—And you will also find, that the old rent is made a rent charge on the premises (after redemption). By which the Duchy are prevented from ever again raising it.—And consequently, this shews the tenant must have some interest beyond a 31 years' term certain.

"COPYHOLD TENANTS," this is afterwards extended to Leasehold tenants. The Lands in question are described as being part of the Lands formerly belonging to the Lord of the Manor of Kennington.

These rules and directions are in the custody of the Duchy, and thereore cannot be got at.

time of the making of such covenants, conditions and reservations, and other agreements, were seised of an absolute estate in fee simple in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators and assigns, other than to our said Sovereign Lord the King and his heirs, and the Duke and Dukes of Cornwall, for the time being, and his and their heirs, and all and every person and persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever, All such rights, titles, estates, customs, interests, *tenures*, claims and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing herein contained to the contrary notwithstanding.

AND be it further enacted by the authority aforesaid, that in case any of the *copyhold tenants* of the said Dutchy shall at any time within three years next ensuing, compound or agree with the Lord High Treasurer of England, or the Commissioners of the Treasury for the time being, or with the Chancellor or Under-Treasurer of the Exchequer, or with any such person or persons as the Lord High Treasurer, Commissioners of the Treasury, or Chancellor and Under-Treasurer of the Exchequer for the time being, shall authorise, nominate, and appoint, for the taking off and discharging of any increased rent reserved as aforesaid, according to such rules and directions as in that behalf shall be given in writing under the hands of the said Lord Treasurer, or Commissioners of the Treasury, or Chancellor and Under-Treasurer of the Exchequer for the time being. Then upon such composition so made, and the money thereby arising duly paid to the Receiver General of the said Dutchy, according to the tenor and contents of such composition and agreement, and accordingly enrolled before the Auditor of the premises. And from thence-

forth such increased rents shall cease and become void, and the old rent only, or such other rent as in pursuance of this Act shall be directed in or by such composition or agreement, shall be *charged* upon all and every such Tenements, Lands, and other Hereditaments for which such composition, agreement, payment, and enrolment, shall be so made, and none other, Any reservation, condition, or other matter whatsoever to the contrary notwithstanding. 25 *Car.* 2*nd*, 3.

Our Rent of £16. 10*s*. 9*d*. a year, has been paid to Michaelmas last,

It seems to me that parts of the Lands, formerly belonging to the Duchy of Cornwall, may have been granted out, on fee farm rents, in the same manner that Lands are now held under the Crown, subject to fee farm rents. There is an exception in this Act, where the reversion is in the Duchy; and as the Duchy have a contingent reversion in our Estate, that might be the reason why this £16. 10*s*. 9*d*. was not sold.

22nd Charles 2, c. 6, A.D. 1669.

AN ACT for advancing the sale of Fee Farm Rents and other Rents.

WHEREAS his Majesty is seised of several fee farm rents and other rents, in right of his Crown, some whereof are parcel of his Highness' Dutchy of Cornwall, &c.

The title of the above Act and part of the Preamble is here stated, in order to shew the rents reserved to the Dutchy were considered as a species of fee farm rents, and were vested in Trustees for sale, in order to raise money for his Majesty to discharge his debts.

Desired to be renewed. Here are many exercises of the right of renewal recognised by the Legislature, throughout most of the Acts.—A Copyholder in fee *prays* the Lord to admit him.—Here the tenant desires his Lease to be renewed.—There are all the same incidents belonging to this Estate, as to a Copyhold in fee.

THIS was an illegal stretch of power admitted, or, it would not have been remedied; particularly, at a time when every oppressive measure was resorted to, to raise the King money.

THIS complaint must have been by Petition to the King.—Perhaps, it would be well to search further for the Petition.—It has been searched for, but not found.

THIS recognition, that the Lands are the lands of the tenants, held under the Duchy, runs through all the Acts, till we come to the 1st Geo. 1st; and is in unison with a vested interest.

"THREE YEARS"—the tenure is here held out for three years more, next after the end of the Session.

All the Acts authorise Renewed Leases to be granted to old tenants, who had already taken under the tenure—and new Leases to others, who were willing to come in and take Leases, under the same tenure.

25th Charles 2nd, c. 3, A.D. 1672.

AN ACT for enabling his Majesty to make Leases of his Lands belonging to the Dutchy of Cornwall.

WHEREAS many of the Lands belonging to the Duchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years, determinable upon one, two, or three lives, and others for thirty-one years and under, *which Leases are* DESIRED *to be renewed by many of the said tenants.*

II. AND whereas of late years divers increased rents have been by order of the late Lord Treasurer, reserved upon the said Leased Lands of the said Dutchy *for the improvement of that* REVENUE, whereof the tenants have complained to the King's Majesty, who is graciously pleased that they may compound with his officers for the discharge of those increased rents, and be restored to the old rents formerly paid for *their respective Tenements and Lands.*

III. Now to the end the same may be accordingly effected, and that the said tenants may be encouraged to renew their Leases and *Estates,* and thereby the better enabled to repair *their houses* and provide for *their families,* and to improve *their Lands holden of the said Dutchy.*

BE it Enacted by the King's most excellent Majesty, by and with the advice of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by authority of the same, That all Leases and Grants *made and to be made* within *three years* next ensuing the end of this present session of Parliament, by our Sovereign Lord the King, by letters patent, or by indenture under the great seal of England, or under the seal of the Court of Exchequer, of any offices in the disposition of the owner of the said Dutchy as Duke of Cornwall, or of any Parks, Lands, Tenements, or Hereditaments, *now in Lease, or out of Lease,* and not

OBSERVATIONS.

Leases made good in Law, according to their design and intent.

"AT ANY TIME HEREAFTER," having perpetuity in view.

ALL Leases are declared good to the tenant in perpetuity, provided they are not made for more than 31 years or 3 lives. Our Letters Patent are made within this proviso, and consequently good in perpetuity against the present King, and every future King or Duke who may hereafter inherit the Duchy.

With a view to preserve the Constitution of the Duchy, as established by 21 James, It is hereby declared that, Leases made contrary thereto, shall be "NULL AND VOID."

granted by copy of Court Roll other than entire Honours, Lordships, or Manors, parcel of the possessions of, or annexed or belonging unto, the said Dutchy of Cornwall, *shall be good and effectual in law,* according to the purport and contents of the same Leases and Grants against our said Sovereign Lord the King, his heirs and successors, and against all and every other person and persons that shall *at any time hereafter* have, inherit, or enjoy the said Dutchy by force of any Act of Parliament, or by any other limitation whatsoever.

IV. PROVIDED always, That every such Lease or Grant so made or to be made be not made for more than one, two, or three lives in possession, or for thirty-one years or under, or for some term of years determinable upon one, two, or three lives, and not above. And if such Leases and Grants be made *in reversion* or expectancy, that then the same, together with the *estates* in possession, do not exceed three lives, or the term of thirty-one years, and not in anywise dispunishable of waste; and so as upon every such Lease shall be reserved the ancient or most usual rent *or more,* or such rent as hath been reserved, yielded, or paid, for the said Lands for the greater part of twenty years next before the making of the said Leases, and shall be reserved due and payable to him or them that shall have the inheritance or other estate of the said Dutchy; and where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Parks, Lands, Tenements, or Hereditaments, contained in such Lease, and all Leases and Grants otherwise made *or to be made, shall be null and void.*

V. AND be it further ordained and enacted by the authority aforesaid, that all covenants, conditions, reservations, and other agreements contained in every Lease or Grant, made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversion of the same Lands, Tenements, or Hereditaments shall come, as for and against them to whom the *interest* of the said Leases or Grants shall come respectively, as if our

sovereign Lord the King's Majesty at the time of the making of such covenants, conditions, and reservations, and other agreements, were seized of an absolute estate in fee simple in the same Lands, Tenements, or Hereditaments.

SAVING always, to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators, or assigns, other than our sovereign Lord the King and his heirs, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every person and persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall by force of any Act of Parliament or other limitation whatsoever; All such rights, titles, estates, customs, interests, *tenures*, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them *had or ought to have had* before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing therein contained to the contrary notwithstanding.

OBSERVATIONS.

THE Legislature careful to confirm all Leases already made.

Grants: it seems by this that many of the Copyholders had come in under the tenure; and fromthis it might be inferred the fines were to be regulated in the same manner as fines on Copyhold.

"DESIRED"—an exercise of the right of renewal.

"REVENUE"—descriptive of the interest of the Duchy, in contra-distinction to the interest of the tenant.

Leases made during Cromwell's Usurpation, are here made good.

The Parliament knew it to be their duty to do every thing they could to protect the tenant's title, and to establish them firmly in the tenure, in order to enable the tenants to sell and assign, or otherwise mortgage, their interest in their property; to raise money—the better to enable them to build and repair their houses, improve their lands, and provide for their families, and encourage others to come in and accept of the same tenure. —The more came in, the more fines—and, consequently, the more increase of revenue.

1st James 2nd, A.D. 1685, c.

AN ACT to enable his Majesty to make Grants, Leases and Copies of Offices, Lands, and Hereditaments, parcel of his Highness' Duchy of Cornwall, or annexed to the same, *and for confirmation of Leases and Grants already made.*

WHEREAS many of the Lands belonging to the Duchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years, determinable upon one, two, or three lives, and others for thirty-one years or under, which Leases are *desired to be renewed by many of the said tenants.*

AND whereas several years next following after the happy restoration of our late Sovereign Lord King Charles the Second, of ever blessed memory, divers increased rents were reserved as well upon the said leased Lands as upon many copyhold Estates of the said Duchy *for the improvement of that revenue, whereof the tenants made complaint* to his said late Majesty, who was graciously pleased that they might compound with his officers for the discharge of the said increased rents and be restored to the old rents formerly paid for *their* respective Tenements and Lands.

Now to the end the same may be accordingly effected, and the said tenants may be encouraged *to renew their Leases and Estates*, and thereby the better enabled to repair *their* houses and provide for *their* families, and to improve *their Lands holden of the said Duchy*; Be it Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by authority of the same, That all Grants made *in the time of his said late Majesty*, or to be made by Copy of Court Roll, according to the custom of the respective Manor or Manors of the said Duchy, or thereunto annexed or belonging, and all Leases and Grants so made by his said late Majesty, or made or to be made within

OBSERVATIONS.

By this time the Duchy Lands were mostly built upon, and therefore, the term for coming in, under the tenure, is here extended to seven years.

Here, let it be remarked, that the 3 years and 7 years allowed for persons to come in and take new Leases under the tenure, and to renew the old Leases, is for the purpose of giving the then King or Duke the advantage of making the best of his Revenue in his own time, by getting all the fines he could.

Note. This Proviso dont say the Leases shall be made for 31 years, or 3 Lives; therefore, the argument falls to the ground, that a 31 years was given as a sufficient interest to encourage the tenants to an outlay of their capital in building and improving. The proviso is for 1, 2, or 3 lives, or for 31 years, or under.

A Lease therefore would have been good for one life, or ten years only; could this have been a sufficient interest to give to the tenants for the purpose, without a tenant-right of renewal being annexed to it.

The Legislature still adhering to the established tenure, for the protection of the Revenue as well as of the tenant.

seven years next ensuing, by Letters Patents or indentures under the Great Seal of England, or Seal of the Court of Exchequer, or by Copy of Court Roll, according to the customs of the respective Manors, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases and Grants, against our said Sovereign Lord the King, his heirs and successors, and against all and every other person and persons that shall at any time hereafter have, inherit, or enjoy the said Duchy, by force of any Act of Parliament, or by any other limitation whatsoever.

Provided always, That every such Lease or Grant so made or to be made, be not made for more than one, two, or three lives, or for thirty-one years or under, or for some term of years, determinable upon one, two, or three lives, and not above. And if such Leases or Grants be made in reversion or expectancy, that then the same, together with the Estates in possession, do not exceed three lives, or the term of thirty-one years, and not in anywise dispunishable of waste, and so as upon every such Lease shall be reserved the ancient or most usual rent *or more*, or such rent as hath been reserved, yielded, or paid for the same Lands, for the greater part of twenty years next before the year of our Lord one thousand six hundred and sixty, and shall be reserved due or payable to him or her that shall have the Inheritance or other Estate of the said Duchy: and where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Messuages, Parks, Lands, Tenements, or Hereditaments, contained in such Lease, *and all Leases and Grants otherwise made or to be made, shall be null and void.*

And be it further ordained and enacted by the authority aforesaid, That all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for

OBSERVATIONS.

Interest of the said Leases. The tenants have a vested interest in the Lease, which is made perpetual by the enacting clause; and this is the good—fixed—and indefeasible estate, proposed to be given them by the 21 James, and all the subsequent statutes:—and whoever succeeds either to the Dukedom or to the vested interest, in the perpetual Lease first granted, are bound by the Covenants, if it is 1000 years after, because once a Lease —always a Lease,—to be continued by renewals on the original terms.

The King and the Duke, for the time being, are shut out of this saving clause, to shew they had parted with the possession of the Land to the tenant.

The tenure which had been violated is here preserved.

"SEVEN YEARS," allowed for redemption of the increased rent,—back to the ancient rent.—Those only could complain who had taken or were entitled to take at the ancient rent only, under 1 Chas. 1.—And those were reimbursed the price paid for redemption, out of their next fine. Those who took under Chas. 2d could not complain, save only that, as it was a departure from the original constitution of 21 Jas., it might be considered as creating an objection to their title. Thus you see why all Leases, made by and in the time of Chas. 2d, are confirmed by 12 and 13 Wm. and Mary; leaving out of such confirmation those made 1 Chas. 1, because they needed none, being strictly within the provisions of 21 James. This shews the Leases are renewable Leases.

and against them to whom the reversion of the same Lands, Tenements, or Hereditaments shall come, as for and against them to whom the interest of the said Leases, Grants or Copies, shall come respectively, as if our Sovereign Lord the King's Majesty at the time of the making of such covenants, conditions, and reservations, and other agreements, were seized of an absolute estate in fee simple in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators, and assigns, (other than to our said Sovereign Lord the King and his heirs, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every person or persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever,) all such rights, titles, estates, customs, interests, *tenures*, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had, or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing therein contained to the contrary notwithstanding.

AND be it further enacted by the authority aforesaid, That in case any of the leasehold or copyhold tenants of the said Duchy shall at any time within seven years next ensuing, compound or agree with the Lord High Treasurer of England, or the Commissioners of the Treasury for the time being, or with any such person or persons as the Lord High Treasurer, or Commissioners of the Treasury for the time being shall authorize, nominate, and appoint, for the taking off and discharging of any increased rent reserved as aforesaid, according to such rules and directions as in that behalf shall be given in writing under the hands of the said Lord Treasurer, or Commissioners of the Treasury for the time being; then upon such composition so made, and the money thereby arising duly paid to the Receiver-general of the said Duchy, according to the tenor and contents of such composition and agree-

ment, and accordingly inrolled before the auditor of the premises, from thenceforth such increased rents shall cease and become void, and the old rent only, or such other rent as in pursuance of this Act shall be directed, in or by such composition or agreement, shall be *charged upon* all and every such Tenements, Lands, and other Hereditaments; for which such composition, agreement, payment, and inrollment shall be so made, and none other: any reservation, condition, or other matter whatsoever to the contrary notwithstanding.

See the anxiety of Parliament to confirm all Leases already granted, and to establish the tenants in the peaceable enjoyment of their tenure, and to encourage them to renew their Leases *and Estates*.

No doubt but the troublesome times of Charles 1st and 2d, had shaken the confidence of the tenants, particularly the old tenants, who first contracted for, and took Leases under the tenure; the circumstance of increasing the ancient rent, also, must have had the same effect; and, therefore, the subsequent Parliaments were very careful to do every thing to raise again that confidence, which, from its being shaken, was likely to have been detrimental to the well working of the tenure; but, in time, that was all overcome, and the tenure worked so well, as to be the occasion of the present immense Revenue of the Duchy.

The tenants seem to have an Estate in the Lease, *i. e.*, the right of renewal of it.

You will see all Leases and Grants, made by Charles 2d, are here made good; this is 32 years after the restoration; and again confirmed, by 11 & 12 Wm. and Mary, 40 or 50 years after. And how could a Lease of 31 years, be made good after it was expired, unless it was renewable and kept always alive, and unless the tenant had a renewable interest in it.

Q. Why not make good Leases granted by Chas. 1st.?

Ans. Because they reserved the ancient rent only, and needed no confirmation.

Another seven years, the tenure held out for.

5th & 6th William and Mary, A.D. 1692. c. 18.

AN ACT for enabling their Majesties to make Grants, Leases, and Copies of Offices, Lands, and Hereditaments, parcel of their Duchy of Cornwall, or annexed to the same, *and for confirmation of Leases and Grants already made.*

WHEREAS many of the Lands belonging to the Duchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years determinable upon one, two, or three lives, and others for thirty-one years or under, which Leases are *desired to be renewed* by many of the said tenants: And whereas several years next following after the happy restoration of his late Majesty King Charles the Second, divers increased rents were reserved, as well upon the said leasehold Lands as upon many copyhold Estates of the said Duchy, *for the improvement of that revenue,* whereof the tenants *made complaint* to his said late Majesty, who was graciously pleased that they might compound for the discharging of the said increased rents, and be restored to the old rents formerly paid for *their* respective Tenements and Lands: Now to the end the same may be accordingly effected, and the tenants may be encouraged to renew *their Leases and Estates*, and thereby the better enabled to repair *their* houses, and provide for *their* families, and to improve *their* lands holden of the said Duchy:

BE it Enacted by the King and Queen's most excellent Majesties, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that all Leases and Grants made by his said late Majesty King Charles the Second, or by the late King James, or by their present Majesties since their happy accession to the Crown, or to be made within seven years next ensuing, by letters patents, or indentures under the Great Seal of England, or Seal of the Court of Exchequer, or by copy of Court Roll, according to the custom of the respective Manors of the

OBSERVATIONS.

See the Journals of the House of Commons, page 808, A.D. 1692, February 2—3. This Bill was before a Committee of the House, who reported it with some amendments, which were agreed to by the House.

THE LORDS afterwards made other amendments, February 18th. On March 7th it was brought to the Commons for their concurrence, page 845: the amendments proposed were to give the officers of the Exchequer £20 for fees for granting the Leases, where the fine to be taken was only £40.

To which the Commons objected, and a Committee was appointed to prepare reasons to be offered at a conference with the Lords, for disagreeing to the amendments.

The following Reasons were fixed on. See Journals House of Commons, page 847, A.D. 1692:—

Commons.

March 9th.

1st.—Because the establishing so great fees will be a discouragement to the tenants, hinder them from renewing, and disable them from paying so great fines as otherwise they might do, to the lessening their Majesty's Revenue, whereof the Commons ought to be very tender, especially at this juncture, when it is so difficult to find money to supply the public occasions.

2nd.—Because the Exchequer Officers, who are the only persons interested in this amendment, when they attended the Committee of the Commons, could not shew a rule for, or make out any right to, the fees they demand, which are far beyond what the tenants of any other Lords pay for their Leases, so that it will be a great favour if the said Officers be allowed by law £10 for a Lease, and £4 for a Copy, when otherwise, for aught appears, their taking half as much is not to be justified.

3rd.—Because the Commons conceive this amendment will be of little or no advantage to the Officers themselves, for the tenants, who are not well able or willing to pay so great fees, would (as of late they have done) let their leases run out to the last. Whereas the moderating the fees, as by the Bill, will encourage them to renew, from time to time, on marrying their Children, or as any life drops off.

4th.—Because the enlarging the fees, as by the amendment, is the laying a charge on the subject, which is so inherent and fundamental a right of the Commons, as they can by no means depart from.

said Duchy, or thereunto annexed, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, parcel of the said Duchy of Cornwall, or annexed to the same, (other than of Honors, Lordships, or Manors,) shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our said Sovereign Lord and Lady the King and Queen, their heirs and successors, and against all and every other person and persons that shall at any time hereafter have, inherit, or enjoy the said Duchy, by force of any Act of Parliament, or by other limitation whatsoever.

PROVIDED always, that every such Lease or Grant so made or to be made, be not for more than one, two, or three lives, or for thirty-one years or under, or for some term of years determinable upon one, two, or three lives, and not above: And if such Leases or Grants be made in reversion or expectancy, that then the same, together with the *estate* in possession, do not exceed three lives, or the term of thirty-one years, and not in anywise dispunishable of waste, and so as upon every such Lease, the ancient or most usual rent *or more*, or such rent as hath been reserved, yielded, or paid for the same Lands for the greater part of twenty years next before the year of our Lord *one thousand six hundred and sixty*, hath been and shall be reserved, due and payable to him or her that shall have the inheritance or other estate of the said Duchy. And where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under a twentieth part of the clear yearly value of the Messuages, Parks, Lands, Tenements, or Hereditaments contained in such Lease: And all Leases and Grants otherwise made or to be made, *shall be null and void.*

AND be it further ordained and enacted by the authority aforesaid, That all covenants, conditions, reservations and other agreements contained in every Lease, Grant, or copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law according to the *words* and contents of the same, as well for and against them to whom the reversion of the same Lands, Tenements, or Hereditaments shall come, as for and against

OBSERVATIONS.

The three first reasons were passed in the negative.

The fourth reason was agreed to by the House.

Whereupon a Conference was desired with the Lords, but it does not appear that any Conference was held.

March 14th—The Royal Assent appears to have been given to several other Bills, but not to this.

A.D. 1693, December—See page 20.—The same person (Mr. Travers) presented again a Bill (being this Act, 5 and 6 William and Mary) and the same was read 1st, 2nd, and 3rd times, and passed the Commons, and he was ordered to carry it to the Lords.

March 17th—See Lords' Journal—This Bill committed to a Committee of the whole House on Wednesday next, and all parties concerned to be then heard.

A.D. 1694, March 28.—The House sat in a Committee, and after some time spent, it was ordered by Earl Stamford, that it had made some progress.

April 14th.—The Bill passed with some few amendments.

April 16th.—The Commons approved the amendments, which they sent back to the Lords, and so it passed into a Law, after being battled by the Commons against the Lords for 2 years.

Note—It is curious that on passing the 33rd Geo. III. the above four reasons, with the negative of the first three, were introduced and ordered to be read that day three months, a very extraordinary proceeding, without taking notice that the Bill was carried by the Commons against the Lords, or without giving notice to any of the tenants interested under the tenure.

The old doubt, too, mentioned in the 21st James, and which had been merged in, and buried under, the Constitution established over it 170 years before, is there conjured up from its grave.

Qy.—Dont this look something like a fraud put upon Parliament, who may well have been off their guard, no person being there to protect the interest of the tenants, and the 21st James having, from lapse of time, been almost cast into oblivion.

them to whom the interest of the said Leases, Grants, or Copies shall come respectively, as if our said Sovereign Lord and Lady the King and Queen's Majesties, at the time of making such covenants, conditions and reservations, and other agreements, were seised of an absolute estate in fee simple in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and assigns (other than our said Sovereign Lord and Lady the King and Queen, and their heirs, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every person and persons that shall *hereafter* have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever), all such rights, titles, estates, customs, interests, *tenures*, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing herein contained to the contrary notwithstanding.

AND be it further Enacted by the authority aforesaid, That in case any of the leasehold or copyhold tenants of the said Duchy shall at any time within seven years next ensuing, compound or agree with the Lord High Treasurer of England, or Commissioners of the Treasury for the time being, or Chancellor and Under Treasurer of the Exchequer for the time being, or with any other person or persons that the Lord High Treasurer, or the Commissioners of the Treasury for the time being, or Chancellor of the Exchequer, shall authorize, nominate, and appoint, for the taking off and discharging of any increased rent, reserved as aforesaid, according to such rules and directions as in that behalf shall be given in writing under the hands of the said Lord Treasurer, Commissioners of the Treasury for the time being, or Chancellor of the Exchequer for the time being; then upon such

OBSERVATIONS.

N.B. Tenants hindered from renewing so often as otherwise they would do.

Ancient rent after redemption to become a *rent charge* on the premises.

See back pages 23 and 24 as to what passed in the Commons respecting this Clause.

Those words "*so often as otherwise they would do,*" shew that power was in the tenants to renew, though they were not obliged to renew in the dropping in of the first or second life, or at other periods of renewal.—No more are we.—This Clause was very strongly opposed by the Lords, and their Deputies in the Commons, and the Bill (after two years' opposition) was at last brought forward again and passed. The officers wanted to charge half the fines for their fees; no doubt it was opposed from interested motives from those who, or whose friends, were participating in those large fees. See extract of what passed in the House of Commons at this time. And it is curious enough, that when the Act, 33d Geo. III. was passed, this extract was introduced and ordered to be read again that time three months—This, as a pretext to get the Act passed, omitting to state that the Commons afterwards passed the Act 5 and 6 William and Mary with this clause in, which before, had been so strongly opposed. There seems to have been a jealousy created between the Lords and Commons at this time; the Act. 33 Geo. III. is evidently passed intending to destroy the tenant-right of renewal, but may be used in support of it, as it is said, that a 31 years is not sufficient interest even to improve the waste lands, how then can it be argued, that it was sufficient to improve the waste lands, and also to build Houses upon it? (see 21 James I.) without a tenant right of renewal. What can more clearly shew that there was a tenant-right of renewal intended to be established by that Act.

composition so made, and the money thereby arising duly paid to the Receiver-general of the said Duchy, according to the tenor and contents of such composition and agreement, and accordingly inrolled before the auditor of the premises, from thenceforth such increased rent shall cease and become void, and the *old rent only*, or such other rent as in pursuance of this Act shall be directed in or by such composition or agreement, shall be *charged* on all and every such Tenements, Lands, and other Hereditaments, for which such composition, agreement, payment, and inrollment shall be so made, and none other: any reservation, condition, or other matter whatsoever to the contrary notwithstanding.

And whereas within the County of Cornwall there are several Tenements belonging to the said Duchy of small value, so that the charge of passing Letters Patents under the Great Seal, or Leases under the seal of the Exchequer, and Grants by copy of Court Roll, may discourage the tenants from *renewing so often as otherwise they would do;* Be it further Enacted by the authority aforesaid, that the whole fees, reward, and charges to be paid, received, or taken, for the preparing, writing, drawing, obtaining reference, report, particular certificate, contract, warrant, inrollment, and entry thereof, and for every other matter and thing relating thereunto, or touching or concerning the obtaining, passing and perfecting of any Lease or Grant of such small Tenements in the said County of Cornwall (where the fine or value of such Lease or Grant, to be made *or renewed*, shall not exceed the sum of eighty pounds), shall not exceed the sum of ten pounds for every Lease, and four pounds for every copy (over and besides the said fine or value): the said respective sums, not exceeding ten pounds, and four pounds, to be paid, distributed, and divided unto and amongst the several and respective officers and clerks of the Exchequer, and stewards of the Honors and Manors of the said Duchy, concerned and employed in the preparing, passing, and perfecting of such Lease or Grant respectively, in such proportion as the fees of Leases or Grants within the said Duchy formerly and hitherto were and are received: and if any of the said officers, clerks and stewards, shall demand, take and receive, any greater or other fee or reward, or shall do or attempt, or cause to be done

OBSERVATIONS.

You see here another instance of the interference of Parliament, in the protection of the tenants, from being charged exorbitant fees by the Duchy Officers, for their renewed Leases, and a seasonable check put to their extravagant charges.

This is the second instance in which the Parliament has interfered in behalf of the tenants, and it is to be hoped that Sir William Clayton's case will be the third.

The Parliament having concocted the measure of a new tenure, are bound by their faith and honour, to protect the tenants in the peaceable and fair enjoyment of it, according to the original intention of the tenure, and not, after giving the tenants every encouragement they could to lay out their capital in building upon, and improving, the Land, professing to give them a good, sure, fixed, and indefeasible Estate for that purpose; and after the tenants have, at their own expense, made every improvement they possibly can, then to permit the Duchy to take the Lands away from them, to the ruin of so many hundreds of families, who have become interested from the faith and confidence they put in Parliament; would be acting contrary to a plain duty, to which I think they stand pledged, as the Guardians of the tenants' rights and interests.

or attempted, any thing contrary hereunto, such officer, clerk and steward, shall forfeit and lose for every such offence to the party grieved in that behalf, so much money as any such officer, clerk or steward shall demand, receive and take, contrary to this Act; and also shall lose and forfeit the sum of twenty pounds, whereof the one moiety shall be to their Majesties, and the other moiety to the party grieved in that behalf, to be recovered by action of debt or information in any of the Courts at Westminster, in which no privilege, essoign, imperiance or protection shall be admitted or allowed.

OBSERVATIONS.

See here again the anxiety of Parliament to give every confirmation to the Leases, so as to make the tenants perfectly secure in their tenure.

Desired to be renewed—an exercise of right running through all the Acts from 22nd Charles 2nd, to 12th Anne inclusive.

"REVENUE"—describing the interest of the Duchy, whilst the Lands are described as the Lands of the tenants, thus shewing how the interest of each party is defined.

Leases made in the time of Charles 2nd confirmed by this Act, 50 years after.—Here, Leases granted during the usurpation, are confirmed.

The work of improvement was going on during this time, as appears by 13th Charles 2nd.

12th & 13th William 3rd, A.D. 1700.

AN ACT to enable his Majesty to make Leases and Copies of Offices, Lands, and Hereditaments, parcel of his Duchy of Cornwall, or annexed to the same; *and for confirmation of Leases already made.*

WHEREAS many of the Lands belonging to the Duchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years, determinable upon one, two, or three lives, and others for thirty-one years or under, which Leases are *desired to be renewed* by many of the said tenants.

AND whereas several years next following after the happy restoration of his late Majesty King Charles the Second, divers increased rents were reserved as well upon the said leased Lands as upon many copyhold Estates of the said Duchy *for the improvement of that* REVENUE, whereof the tenants made complaint to his said late Majesty, who was graciously pleased that they might compound with his officers for discharge of the said increased rents, continuing only the old rents formerly paid for *their respective Tenements and Lands:* Now to the end the same may be accordingly effected, and the said tenants may be encouraged to renew *their Leases and Estates,* and thereby the better enabled to repair *their* houses, and provide for *their* families, and to improve *their Lands holden of the said Duchy:* Be it Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases and Grants made *in the time* of his said late Majesty King Charles the Second, or *in the time* of the late King James, or by his Majesty King William and the late Queen Mary, or by his said present Majesty since his happy accession to the crown, or to be made by Copy of Court Roll, according to the custom of the respective Manor or Manors of the said Duchy, or thereunto annexed or

OBSERVATIONS.

LEASES have been granted when there has been no Act of Parliament existing, but the Legislature has been always exceedingly careful to confirm all Leases already granted, (which were voidable for want of an Act, or, for not having the ancient rent reserved), so careful was the Legislature to protect the title of the tenant, with the view of getting the Land built upon and improved, and as they were in duty to the tenants bound to do; having concocted the tenure for the tenants, they are pledged to protect them in the enjoyment of it, so that every Lease granted is made good against the present King, who has no power to set it aside, we having an indefeasible right of renewal, which is that called in the Acts, *an indefeasible Estate*, and is what the Statute of James proposed to give under the name of a *good Estate*.

At any time hereafter—Words which carry perpetuity with them as well during the 31 years as at any time thereafter.

The proviso dont say Leases shall be made for 31 years or three lives, but not exceeding those periods. A Lease of ten years, or for one life only, would be equally as good a Lease under the Act, as one for 31 years or three lives; and those short periods shew it could never be intended that such Leases could give such a good, sure, fixed, and indefeasible Estate as was intended to be given, but the means only of having and enjoying that perpetuity of interest.

THIS Act refers back to the year 1640, a proof that all the Acts are to be considered as one Act only, and are to be taken together, in order to form a true construction of the 21st James, which is the original Constitution established, giving Laws to govern the property.

Null and void—STILL adhering to the original tenure.

belonging, and all Leases and Grants so made *by* his said Majesty King Charles the Second, or *by* the late King James, or by his Majesty King William and the late Queen Mary, or by his present Majesty since his happy accession to the crown, or to be made within *seven* years next ensuing by letters patents or indentures, under the Great Seal of England or seal of the Court of Exchequer, or by Copy of Court Roll, according to the custom of the respective Manors of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments (other than Honors, Lordships, or Manors) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lord the King, his heirs and successors, and against all and every other person and persons that shall *at any time hereafter* have, inherit, or enjoy, the said Duchy by force of any Act of Parliament, or by other limitation whatsoever.

Provided always, That every such Lease or Grant so made or to be made, be not for more than one, two, or three lives, or for thirty-one years or under, or for some term of years determinable upon one, two, or three lives, and not above: And if such Leases or Grants be made in reversion or expectancy, that then the same, together with the *estates* in possession, do not exceed three lives or the term of thirty-one years, and not in anywise dispunishable of waste: And so as upon every such Lease shall be reserved the ancient or most usual rent *or more*, or such rent as hath been reserved, yielded, or paid for the same Lands for the greater part of twenty years next before the year of our Lord *one thousand six hundred and sixty*, and shall be reserved due and payable to him or her that shall have the inheritance or other estate of the said Duchy: And where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent not being under the twentieth part of the clear yearly value of the Messuages, Parks, Lands, Tenements, or Hereditaments, contained in such Lease: And all Leases and Grants otherwise made or to be made *shall be null and void.*

And be it further ordained and enacted by the authority afore-

Interest—or in other words, the benefit of renewal of the said Leases.

Bodies politic and corporate, their heirs, successors, administrators, and assigns—those words convey the idea of perpetuity also.

Tenures protected.
Had a right to have had—this may be applied to the right of renewal.

TENURE held out for another seven years—and the same period given to compound for restoration to the ancient rent.

The rent was increased to yield a Revenue to Chas. 2d, on his restoration, amongst other arbitary measures, for the purpose of raising him money.

said, That all covenants, conditions, reservations, and other agreements, contained in every Lease, Grant, or Copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments, shall come, as for and against them to whom the *interest* of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty at the time of making such covenants, conditions, and reservations, and other agreements, were seized of an absolute estate in fee simple, in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators, and assigns (other than to our Sovereign Lord the King and his heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every other person and persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever,) All such rights, titles, estates, customs, interests, *tenures*, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them *had a right to have had* before the making of this Act to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made: This Act or any thing herein contained to the contrary notwithstanding.

AND be it further Enacted by the authority aforesaid, that in case any of the leasehold or copyhold tenants of the said Duchy shall at any time within *seven* years next ensuing, compound or agree with the Lord High Treasurer of England, or Commissioners of the Treasury for the time being, or Chancellor and Under-Treasurer of the Exchequer for the time being, or with any such other person or persons as the Lord High Treasurer, or Commissioners of the Treasury for the time being, or Chancellor of the

Exchequer for the time being, shall authorise, nominate, and appoint, for the taking off and discharging any increased rent reserved as aforesaid, according to such rules and directions as in that behalf shall be given in writing under the hands of the said Lord Treasurer, or Commissioners of the Treasury for the time being, or Chancellor of the Exchequer for the time being. Then upon such composition so made, and the money thereby arising duly paid to the Receiver General of the said Duchy for the time being, according to the tenor and contents of such composition and agreement, and accordingly enrolled before the Auditor of the premises: From thenceforth such increased rent shall cease and become void, and the old rent only, or such other rent as in pursuance of this Act shall be directed in or by such composition or agreement, *shall be charged* on all and every such Tenements, Lands, and other Hereditaments for which such composition, agreement, payment, and enrolment, shall be so made, and none other: Any reservation, condition, or other matter whatsoever to the contrary notwithstanding.

And whereas his Majesty hath given and granted some parcels of ground and part of his palace at East Greenwich, in the County of Kent, for the erecting thereon an Hospital for the relief of disabled Seamen, which may not appear to be of sufficient extent and capacity for all the occasions for buildings or otherwise, as the same may hereafter necessarily require: It is hereby declared and enacted that it is and shall be lawful for his Majesty, his heirs or successors, to make any further Grant of Grounds, Lands, or Edifices, lying near or adjoining to the said before—granted premises, being part of his Manor of Greenwich aforesaid, which he shall see necessary and think fit to give for the aforesaid use: any Law, Act, or Statute to the contrary notwithstanding.

Another exercise of right of renewal.

For the improvement of that Revenue: those words are descriptive of the limited interest the Duchy have.

Made complaint. Shews they had sustained an injury by a violation of their tenure; and of consequence, that they had a permanent interest in the lands. Otherwise the Duchy would have had a right to have fixed any rent they chose.

Their Leases and Estates. Shews the tenants had a good Estate in the Lease, being the right of renewing it.

"MADE."—The Acts have all a retrospective operation.

TENURE held out for another 7 years. The property is recognized as the property of the tenants, holden of the Duchy, the same as the Copyholds of inheritance are held under them. Both Copyhold and Leasehold are alike as to the interest of Lord and tenant, and Duke and tenant; and as regards the manner in which fines have been calculated.

6th Anne, 1707.

AN ACT to enable Her Majesty to make Leases and Copies of Offices, Lands, and Hereditaments, parcel of her Duchy of Cornwall, or annexed to the same.

WHEREAS many of the Lands belonging to the Duchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years determinable upon one, two, or three lives, and others for thirty-one years or under, which Leases are *desired* to be renewed by many of the said Tenants; And whereas several years next following after the happy Restoration of his late Majesty King Charles the Second, divers increased rents were reserved, as well upon the said leased Lands, as upon many copyhold Estates of the said Duchy, *for the improvement of that revenue,* whereof the tenants made *complaint* to his said late Majesty, who was graciously pleased that they might compound with his officers for discharge of the said increased rents, continuing only the old rents formerly paid for *their* respective Tenements and Lands. Now to the end the same may be accordingly effected, and the said tenants may be encouraged to *renew their Leases and Estates,* and thereby the better enabled to repair *their* houses, and provide for *their* families, and to improve *their Lands holden of the said Duchy:* Be it Enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases and Grants *made* or to be made by copy of Court Roll, according to the custom of the respective Manor or Manors of the said Duchy, or thereunto annexed or belongingg, and all Leases and Grants to be made within seven years next ensuing, by letters patents or indentures under the Great Seal of Great Britain, or seal of the Court of Exchequer, or by copy of Court Roll, according to the custom of the

Purport and content, according to Cowell, means design and intent; the Covenants in the Leases are to be good according to the words and contents.

"1660." Whatever Rent this was—it was to be reserved in the Leases, and it was to fix what should be esteemed the rent to be reserved. But this reference back to this period, shews that all the Acts from 21 James 1 downwards, are to be considered as one Act, down to 16 Geo. 3d, exclusive of all subsequent ones, made and passed in direct violation of the original tenure, and of all former Acts.

"SHALL BE NULL AND VOID."—The Legislature still keeps close to the original tenure.

The Duke or King has a reversionary interest, in case the tenant neglects to renew, the same as a Lord of a Manor has, should his Copyholder neglect to take out his admission.

"INTERESTS"—in other words—the tenant-right of renewal.

respective Manors, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lady the Queen, her heirs and successors, and against all and every other person or persons that shall at any time hereafter have, inherit, or enjoy the said Duchy by force of any Act of Parliament, or by other limitation whatsoever.

PROVIDED always, that every such Lease or Grant, so made or to be made, be not for more than one, two, or three lives, or for one and thirty years, or under, or for some term of years determinable upon one, two, or three lives, and not above. And if such Leases or Grants be made in reversion or expectancy, That then the same, together with the *Estates* in possession, do not exceed three lives, or the term of one and thirty years, and not in any wise dispunishable of waste, and so as upon every such Lease shall be reserved the ancient or most usual rent, *or more,* or such rent as hath been reserved, yielded, or paid for the same Lands, for the greater part of twenty years next before the year of our Lord *one thousand six hundred and sixty,* shall be reserved due and payable to him or her that shall have the inheritance or other estate of the said Duchy. And where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under the *twentieth* part of the clear yearly value of the Messuages, Parks, Lands, Tenements, or Hereditaments contained in such Lease, and all Leases and Grants otherwise made, or to be made, *shall be null and void.*

AND be it further ordained and enacted by the authority aforesaid, that all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or Copy of Court Roll made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments shall come, as for and against them to whom the *interests* of the said Leases, Grants, or Copies shall come re-

"HEREAFTER."—having perpetuity in view.

"TENURES."—the 21st James is the tenure meant in all the Acts alluded to.

The Copyholds were intended to be put on the same footing as the Leaseholds, not only as to the mode of calculating the fines on renewal, but in all other respects.

Will it be of any use to see what those rules and directions were?—If we could get at them, something favourable, perhaps, may be drawn from them.

They are in the hands of the Duchy, and, I fear, cannot be got at.

pectively, as if our Sovereign Lady the Queen's Majesty, at the time of making such covenants, conditions and reservations, and other agreements, were seised of an absolute estate in fee simple, in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and assigns, (other than to our said Sovereign Lady the Queen, and her heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs and all and every other person and persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever,) all such rights, titles, estates, customs, interests, *tenures*, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had, before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made: this Act, or any thing herein contained to the contrary, notwithstanding.

AND be it further Enacted by the authority aforesaid, that in case any of the leasehold or copyhold tenants of the said Duchy shall at any time within seven years next ensuing, compound or agree with the Lord High Treasurer of Great Britain, or Commissioners of the Treasury for the time being, or Chancellor and Under-Treasurer of the Exchequer for the time being, or with any such other person or persons as the Lord High Treasurer, or the Commissioners of the Treasury for the time being, or Chancellor of the Exchequer for the time being, shall authorise, nominate, and appoint, for the taking off and discharging any increased rent reserved as aforesaid, according to such rules and directions as in that behalf shall be given in writing, under the hands of the said Lord Treasurer, or Commissioners of the Treasury for the time being, or Chancellor of the Exchequer for the time being: then upon such composition so made, and the money thereby arising duly paid to the Receivers General of the said Duchy for the time being, according to the

tenor and contents of such composition and agreement, and accordingly inrolled before the Auditors of the premises, from thenceforth such increased rent shall cease and become void, and the old rent only, or such other rent as in pursuance of this Act, shall be directed in or by such composition or agreement, shall be charged on all and every such Tenements, Lands, and other Hereditaments, for which such composition, agreement, payment, and inrollment shall be so made, and none other: any reservation or other matter whatsoever to the contrary notwithstanding.

OBSERVATIONS.

This Act is a continuation of the last. Now I say all the Acts are nothing more than a continuation of the Constitution given by 21 James, down to 16 Geo. 3d, under which our Letters Patent were granted. And after that, the constitution seems to have been violated by the 3 last Acts passed, which are, as it seems to me, intended to take away the tenants' rights, and break up the constitution, and require the interference of Parliament to prevent it.

Another exercise of right of renewal.

"THE OLD RENTS FORMERLY PAID."—Having reference to Chas. 2d, 1660—110 years before—shewing that the first Lease taken under the tenure, is the basis on which the tenant-right of renewal is founded; and is the commencement of the tenure so violated, by increasing the ancient rent, contrary to 21 Jas.—All subsequent Leases are a continuation of the tenants' title.

Recognition of the Lands, being the Lands of the tenants held of the said Duchy.

"MADE."—All the Acts have a retrospective operation. The Law, according to the directions of Mr. Glanville, is made, so that Leases should, at all times, be made good.

TENURE held out for another 7 years: not only with a view to encourage persons to come in under it, but with a view to put as many fines into the pocket of the Queen as possible.

12th Anne, 1710.

AN ACT *to continue an Act of the sixth year of Her Majesty's reign,* intitled, An Act to enable Her Majesty to make Leases and Copies of Offices, Lands, and Hereditaments, parcel of her Duchy of Cornwall.

WHEREAS many of the Lands belonging to the Duchy of Cornwall have been granted by Lease to the tenants, some for the term of one, two, or three lives, and some for divers years determinable upon one, two, or three lives, and others for thirty one years or under, which Leases *are desired to be renewed by many of the said tenants:* And whereas several years next following after the happy Restoration of his late Majesty King Charles the Second, divers increased rents were reserved, as well upon the said leased Lands, as upon many copyhold Estates of the said Duchy, *for the improvement of that Revenue,* whereof the tenants *made complaint* to his said late Majesty, who was graciously pleased that they might compound with his officers for discharge of the said increased rents, continuing only the old rents formerly paid for *their respective Tenements and Lands:* Now to the end the same may be accordingly effected, and the tenants may be encouraged to renew *their* Leases and *Estates,* and thereby the better enabled to repair *their houses,* and provide for *their* families, and to improve *their Lands holden of the said Duchy:* Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases and Grants *made,* or to be made, by Copy of Court Roll, according to the custom of the respective Manor or Manors of the said Duchy, or thereunto annexed or belonging, and all Leases and Grants to be made within *seven* years next ensuing, by letters patents or indentures under the Great Seal of Great Britain, or Seal of the Court of Exchequer, or by Copy of Court Roll, according to the custom of the respective Manors, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall

OBSERVATIONS.

If the Lease had only been for 31 years or three lives certain, it would have said, at any time hereafter *during the continuance of the said Leases*; but at *any time thereafter*, seems to carry perpetuity in the view, and make the Lease a Lease in perpetuity, provided it be not made for more than 31 years or 3 lives.

This part of the proviso shews the Leases were intended as the means by which the tenant was to have and enjoy the perpetuity of interest given him; and without which proviso, the Duchy would have been without fines for renewal.

It is the means by which they are to get at their Revenue. No Renewals, no Revenue.

Another reference back, which shews all the Acts must be taken together; and that all the subsequent Acts from 21 James 1, are a continuation of the original tenure—down to 16 Geo. 3d, under which our Letters Patent were granted; and which are made strictly within the provisions of the Act; and, therefore, our Lease is a perpetual Lease; and Sir Wm. Clayton has a vested interest in it, namely, a tenant-right of renewal of it.

The Legislature is careful to preserve the tenure by making all Leases, granted contrary thereto, *null and void*. The 33 Geo. 3d, nevertheless, authorizes Leases to be made contrary thereto, which seems a violation of the original constitution of the Duchy.

For "INTEREST," read, tenant-right of renewal.

be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants against our Sovereign Lady the Queen, her heirs and successors, and against all and every other person or persons that shall at any time hereafter have, inherit, or enjoy the said Duchy, by force of any Act of Parliament, or by other limitation whatsoever.

PROVIDED always that every such Lease or Grant so made or to be made, be not for more than one, two, or three lives, or for one and thirty years or under, or for some term of years determinable upon one, two, or three lives, and not above. And if such Leases or Grants be made in reversion or expectancy, that then the same, together with the *estates* in possession, do not exceed three lives, or the term of one and thirty years, and not in any wise dispunishable of waste, and so as upon every such Lease shall be reserved the ancient or most usual rent, *or more*, or such rent as hath been reserved, yielded, or paid for the same Lands, for the greater part of twenty years next before the year of our Lord one thousand six hundred and sixty, shall be reserved due and payable to him or her that shall have the inheritance or other estate of the said Duchy: and where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under the *twentieth* part of the clear yearly value of the Messuages, Parks, Lands, Tenements, and Hereditaments contained in such Lease, and all Leases and Grants otherwise made or to be made, *shall be null and void.*

AND be it further Ordained and Enacted by the authority aforesaid, That all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or Copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments shall come, as for and against them to whom the *interest* of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lady the Queen's Majesty, at the time of making such covenants, conditions, and reservations, and other agreements, was

seised of an absolute Estate in fee simple, in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and assigns, (other than to our said Sovereign Lady the Queen, and her heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every other person and persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament, or other limitation whatsoever): All such rights, titles, estates, customs, interests, *tenures*, claims and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made: this Act, or any thing herein contained to the contrary notwithstanding.

AND be it further Enacted by the authority aforesaid, That in case any of the *leasehold* or copyhold tenants of the said Duchy shall, at any time within seven years next ensuing, compound or agree with the Lord High Treasurer of Great Britain, or Commissioners of the Treasury for the time being, or Chancellor and Under Treasurer of the Exchequer for the time being, or with any such other person or persons as the Lord High Treasurer, or the Commissioners of the Treasury for the time being, or Chancellor of the Exchequer for the time being, shall authorise, nominate, and appoint for the taking off and discharging any increased rent reserved as aforesaid, according to such rules and directions as in that behalf shall be given in writing, under the hands of the said Lord Treasurer, or Commissioners of the Treasury for the time being, or Chancellor of the Exchequer for the time being, then upon such composition so made, and the money thereby arising duly paid to the Receiver General of the said Duchy for the time being, according to the tenor and contents of such composition and agreement, and accordingly inrolled before the Auditor of the premises, from

thenceforth such increased rent shall cease and become void, and the old rent only, or such other rent as in pursuance of this Act shall be directed in or by such composition or agreement, *shall be charged* on all and every such Tenements, Lands, and other Hereditaments, for which such composition, agreement, payment, and inrollment shall be so made, and none other: any reservation or matter to the contrary notwithstanding.

First variation of the Preamble.

Here comes the first variation from the usual preamble, and though the words, good and indefeasible Estates, are retained, it does not recognize the Lands as the property of the Tenants held under the Duchy; neither does it recognize renewals; probably the Officers of the Duchy had now first begun to discover, that the Tenants, from lapse of time, were beginning to lose sight of their tenant-right of renewal, and from this period, kept every expression out of the Acts, to shew such right, or the interest the Tenants had in the Lands, in expectation, that after a further lapse of time, it would be totally lost sight of by the Tenants, particularly as none of the first Acts, where those facts are recognized, are to be met with in the modern statute books, but merely the titles of those Acts; but as the same mode of granting the Leases as set forth in 21st James, is still preserved up to 16th Geo. 3rd, it cannot affect our case.

"MADE"—having a retrospective and prospective operation the same as the others.

"AND TO THE END, &c."—the same design.

"SEVEN YEARS"—the tenure is held out, as it always was, as boon to the tenants.

This Act gives a good and indefeasible Estate to the Tenant in perpetuity, against all and every person that, *at any thereafter*, should have, inherit, or enjoy the Dukedom—which Leases, as it seems to me, were

or 2nd

N.B. There is an Act passed 10th Geo. 3rd, but it is out of print, and I cannot get it from the King's Printer, or otherwise.

J. H.

24th George 2, 1750.

AN ACT to enable His Majesty to make Leases and Copies of Offices, Lands, and Hereditaments, parcel of his Duchy of Cornwall, or annexed to the same.

WHEREAS his most excellent Majesty now stands seized of the Duchy of Cornwall, and the possessions thereof: And whereas some doubts may arise in relation to his Majesty's granting Leases and making Copies of Offices, Lands, and Hereditaments, parcel of his said Duchy, or thereunto annexed or belonging: For obviating whereof, and for the ease and quiet of the minds of such persons as have taken, or shall hereafter take Leases from his said most excellent Majesty, and to the end that such persons may be sure to have *good and indefeasible Estates*, and be encouraged to lay out monies in building and repairing, or otherwise improving the several Lands and Tenements to them demised, or to be demised: Be it Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases and Grants made or to be made, by Copy of Court Roll, according to the custom of the respective Manor or Manors of the said Duchy, or thereunto annexed or belonging; and all Leases and Grants to be made within *seven* years next ensuing, by letters patents or indentures, under the Great Seal of Great Britain, or Seal of the Court of Exchequer, or by Copy of Court Roll, according to the custom of the respectivs Manors, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lord the King, his heirs and successors, and against all and every other person or persons that shall *at any time hereafter* have, inherit, or enjoy the

intended should last as long as the Dukedom was in existence, or a person found to inherit it, provided the Leases are not made for more than 31 years, or three lives, or some term determinable on three lives, and the other provisions of the Act complied with; and which are all complied with in our Letters Patent.

"MANORS" are not authorized to be leased, and are not included in the Acts; from the 13th Charles 2nd to this period the word Manors should not have been inserted.

"*Tythes*" are also introduced.

"*Null and void*"—the Legislature still adheres to the original tenure of 21st James.

"*Interests,*" or tenant-right of renewal of the said Leases, &c.

"Their heirs, &c.—These words carry perpetuity in view, and are in unison with Leases in perpetuity, according with the enactment clause.

said Duchy, by force of any Act of Parliament, or by other limitation whatsoever.

PROVIDED always, that every such Lease or Grant so made, or to be made, be not for more than one, two, or three lives, or for one and thirty years or under, or for some term of years determinable upon one, two, or three lives, and not above; and if such Leases or Grants be made in reversion or expectancy, that then the same, together with the *Estates* in possession, do not exceed three lives, or the term of one and thirty years, and be not in any wise made dispunishable of waste; and so as upon every such Lease or Grant be or shall be reserved the ancient or most usual rent, *or more*, or such rent as hath been reserved, yielded, or paid for the same Manors, Lands, or Hereditaments, for the greater part of twenty years next before the making of the said Leases; and where no such rent hath been reserved or payable, that then upon every such Lease there be or shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Manors, Messuages, Parks, Lands, Tythes, Tenements, or Hereditaments contained in such Lease or Grant, and all Leases or Grants otherwise made or to be made, *shall be null and void.*

AND be it further ordained and Enacted by the authority aforesaid, that all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or Copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments shall come, as for and against them to whom the *interests* of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty, at the time of making such covenants, conditions, and reservations, and other agreements, were seised of an absolute estate in fee simple, in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators and assigns, (other than to our said Sovereign Lord the King, and

his heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs; and all and every other person and persons that shall *hereafter* have, inherit, or enjoy the said Dukedom of Cornwall by force of any Act of Parliament or other limitation whatsoever): all such rights, titles, estates, customs, *interests, tenures,* claims and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had and made: this Act or any thing herein contained to the contrary notwithstanding.

OBSERVATIONS.

Though the title of this Act says, for other purposes therein mentioned, it is for no other purpose.

The preamble in this Act shews it to be a continuation of the Constitution of the Duchy, as established by 21st James.

This altered preamble continues through the remainder of the Acts.—It is quite clear the King or Duke could not grant a valid Lease to the tenants, without the authority of Parliament, and therefore Acts are necessary at all times, otherwise they could neither mortgage nor sell their interest, and an invalid Lease would be useless to them if they wanted to borrow money upon the security of it. We could have given no security to Sir Robert Taylor and Craig, for the £6000 borrowed, without the Letters Patent had been granted under the 16th Geo. 3rd, and had been renewable. It is evident they were considered renewable at the time the mortgage was made.

The Leases are made perpetual Leases under this and every Act, provided they are made in compliance with the provisions thereof.

No further observations are necessary on this Act, or the next, being exactly worded the same as the foregoing.

33rd George 2nd, 1759.

AN ACT to enable his Majesty to make Leases and Copies of Offices, Lands, and Hereditaments, parcel of his Duchy of Cornwall, or annexed to the same, and for other purposes therein mentioned.

WHEREAS his most excellent Majesty now stands seised of the Duchy of Cornwall, and the possessions thereof: And whereas some doubts may arise in relation to his Majesty's granting Leases, and making Copies of Offices, Lands, and Hereditaments, parcel of his said Duchy, or thereunto annexed or belonging: For obviating whereof, and for the ease and quiet of the minds of such persons as have taken, or shall hereafter take Leases from his said most excellent Majesty; And to the end that such persons may be sure to have *good and indefeasible estates*, and be encouraged to lay out monies in building and repairing, or otherwise improving the several Lands and Tenements to them demised, or to be demised; Be it Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases and Grants made or to be made within *seven* years next ensuing, by letters patents or indentures under the Great Seal of Great Britain, or Seal of the Court of Exchequer, or by Copy of Court Roll, according to the customs of the respective Manors, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honors, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lord the King, his heirs and successors, and against all and every other person or persons, that shall *at any time hereafter* have, inherit, or enjoy the said Duchy, by force of any Act of Parliament or by other limitation whatsoever.

for the time being, and his and their heirs, and all and every other person and persons that shall *hereafter* have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever), All such rights, titles, estates, customs, *interests, tenures,* claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes and in as large and ample manner and form as if this Act had never been had or made: This Act or any thing herein contained to the contrary notwithstanding.

1st George 3rd, 1760.

AN ACT to enable His Majesty to make Leases, and Copies of Offices, Lands, and Hereditaments, parcel of his Duchy of Cornwall, or annexed to the same; and for other purposes therein mentioned.

WHEREAS His most excellent Majesty now stands seised of the Duchy of Cornwall, and the possessions thereof: And whereas some doubts may arise in relation to his Majesty's granting Leases, and making Copies of Offices, Lands, and Hereditaments, parcel of his said Duchy, or thereunto annexed or belonging: For obviating whereof, and for the ease and quiet of the minds of such persons as have taken, *or shall hereafter* take, Leases from his said most excellent Majesty, and to the end that such persons may be sure to have good and indefeasible Estates, and be encouraged to lay out monies in building and repairing, or otherwise improving the several Lands and Tenements to them demised, *or to be demised:* be it Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same: That all Leases and Grants *made or to be made,* by Copy of Court Roll, according to the custom of the respective Manor or Manors of the said Duchy, or thereunto annexed or belonging; and all Leases and Grants *made or to be made* within seven years next ensuing, by letters patents or indentures, under the Great Seal of Great Britain, or Seal of the Court of Exchequer, or by Copy of Court Roll, according to the custom of the respective Manors, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lord the King, his heirs and successors, and against all and every other person or persons that shall at any time hereafter have, inherit,

or enjoy the said Duchy, by force of any Act of Parliament, or by other limitation whatsoever.

PROVIDED always, that every such Lease or Grant *so made or to be made*, be not for more than one, two, or three lives, or for one and thirty years, or under, or for some term of years determinable upon one, two, or three lives, and not above; and if such Leases or Grants be made in reversion or expectancy, that then the same, together with the estates in possession, do not exceed three lives, or the term of one and thirty years, or some term of years determinable upon one, two, or three lives, and be not in any wise made dispunishable of waste, and so as upon every such Lease or Grant be or shall be reserved the ancient or most usual rent, *or more*, or such rent as hath been reserved, yielded, or paid for the same Manors, Lands, or Hereditaments, for the greater part of twenty years next before the making of the said Leases; and where no such rent hath been reserved or payable, that then, upon every such Lease, there be, or shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Manors, Messuages, Parks, Lands, Tythes, Tenements, or Hereditaments contained in such Lease or Grant: and all Leases and Grants otherwise made, or to be made, *shall be null and void*.

AND be it further Ordained and Enacted by the authority aforesaid, that all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or Copy of Court Roll made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments shall come, as for and against them to whom the interest of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty, at the time of making such covenants, conditions and reservations, and other agreements, were seised of an absolute Estate in fee simple, in the same Lands, Tenements, or Hereditaments.

SAVING always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators,

and assigns, (other than to our said Sovereign Lord the King, and his heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every other person and persons that shall hereafter have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament, or other limitation whatsoever): all such rights, titles, estates, customs, interests, tenures, claims and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them had, or ought to have had, before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made: this Act or any thing herein contained to the contrary notwithstanding.

This Act is for no other purpose, though the Title runs so.

On this Act the following observation occurs, and which will at once shew the inconsistency of the construction, that the Leases were intended to be restricted to 31 years, or three lives certain—

Supposing a Lease had been granted in 1767, for three lives certain, and Sir William Clayton had been one of those lives, the late King would have been kept out of any Revenue arising by fines taken on renewals, if there were no tenant-right of renewal attached to the Leases, for the space of 62 years, with one life still remaining to run against the present King.

As the case stands, with a right of renewal, he was kept out of a fine for 56 years, but then that was by the long co-existence of the three lives, and there will be the amount of three fines to be paid for the next renewal, if another renewal cannot be effected before his death, but if it can, two fines only would be due.

"MADE OR TO BE MADE"—Still following Mr. Glanville's direction, that Leases should be at all times made good.

"At any time hereafter"—These words carry perpetuity with them; if the Lease had continuance only for 31 years certain, the expression would have been, not at any time hereafter, but at any time during the term granted, or during the Lease. Those words, at any time hereafter, make the Lease a perpetual Lease, if made under the provisions which immediately follow.

During the Minority of the Prince of Wales.

8th George 3rd, 1767, c. 26.

AN ACT to enable His Majesty to make Leases, Copies, and Grants of Offices, Lands, and Hereditaments, parcel of the Duchy of Cornwall, or annexed to the same, *and for other purposes therein mentioned.*

WHEREAS his Royal Highness George Prince of Wales, now stands seised of the Duchy of Cornwall, and the possessions thereof: And whereas it is necessary to enable his Majesty to grant Offices, and to make Leases and Grants, by Copy of Court Roll, of Lands and Hereditaments, parcel of the said Duchy, or thereunto annexed or belonging, during the minority of his Royal Highness: Be it therefore Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that all Leases and Grants made or to be made, by letters patent or indentures, under the Seal of Great Britain, or Seal of the Court of Exchequer, or by Copy of Court Roll, according to the custom of the respective Manors, within *seven* years next ensuing, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lord the King, his heirs and successors, his Royal Highness George Prince of Wales, and against all and every other person or persons who shall *at any time hereafter*, have, inherit, or enjoy the said Duchy, by force of any Act of Parliament or by other limitation whatsoever.

PROVIDED always, that every such Lease or Grant, so made or to be made, be not for more than one, two, or three lives, or for one and thirty years, or under, or for some term of years determinable upon one, two, or three lives, and not above: and if such Leases or

OBSERVATIONS.

And which provisions were introduced into the Act to secure to the Duchy a Revenue to arise out of the improvements, made by fines to be taken on renewals; the Leases being the means by which that purpose is effected, and the means by which the tenant was to have and enjoy the good estate or pepetuity of interest given him in the Lease.

Tithes are here again mentioned.

"NULL AND VOID." The Legislature stills adhering to the terms of the tenure originally created by the 21st James 1st, making all other Leases "null and void."

Interest, this word may be well construed to mean the tenant-right of renewal; that being the renewable interest in the Lease, as annexed thereto, by virtue of 21 James, by means of which, the perpetuity of interest is enjoyed.

"AND ASSIGNS." This shews the tenant had a right to assign his interest; and to deal with the property in any sort of way he liked, as long as he kept within the bounds of his tenure.

Grants be made in reversion or expectancy, that then the same, together with the Estates in possession, do not exceed three lives, or the term of one and thirty years, or some term of years determinable upon one, two, or three lives, and be not in any wise made dispunishable of waste: And so as, upon any such Lease or Grant, there be, or shall be, reserved the ancient or most usual rent or more, or such rent as hath been reserved, yielded, or paid, for the same Lands or Hereditaments, for the greater part of twenty years next before the making of the said Leases or Grants; and where no such rent hath been reserved or payable, that then upon every such Lease there be or shall be reserved a reasonable rent, not being under the *twentieth* part of the clear yearly value of the Messuages, Parks, Lands, *Tithes*, Tenements, or Hereditaments contained in such Lease or Grant, and all Leases or Grants otherwise made or to be made, *shall be null and void.*

And be it further Ordained and Enacted, by the authority aforesaid, That all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or Copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law, according to the *words* and contents of the same, as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments shall come, as for and against them to whom the *interest* of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty, at the time of making such covenants, conditions, and reservations, and other agreements, were seised of an absolute estate in fee simple, in the same Lands, Tenements, or Hereditaments.

Saving always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and *assigns*, other than to our said Sovereign Lord the King, and his heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every other person and persons that shall *hereafter* have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament, or other limitation whatsoever: all such rights, titles, estates, customs,

OBSERVATIONS.

Here it may be remarked once for all, that the reason why all the Acts of Parliament confirm and make good all prior Leases made, is, That the first Lease the tenant took under the tenure given by 21 Jas. 1st, forms the basis, or ground, and foundation of his title. That the Leases having more than the ancient rent reserved, those granted without the authority of any Act of Parliament, of which there were some, and those granted during the usurpation, were all voidable Leases; and, of course, no renewals of those Leases could be good, without their original Lease being first confirmed, and made good, according to the direction of Mr. Glanville; that the Law should be made so that Leases should at all times be made good. And the Leases being so confirmed and made good, enabled the tenant to raise money on security of his Lease, in order to carry on his improvements, and which was our case: the right of renewal being mortgaged as security for £ 6000. the greatest part of which, if not all, was expended in the improvements made by Sir Wm. and his father, to prepare the ground for building purposes, and other necessary expenses incident thereto; and which mortgage is recognised by the Duchy, and enrolled in their office.

interests, tenures, claims and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them *had or ought to have had,* before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made: this Act, or any thing herein contained to the contrary notwithstanding.

OBSERVATIONS.

This is the Act under which the present Letters Patent are granted, and was passed but the year before.

"MADE OR TO BE MADE"—retrospective nd prospective.

Our Letters Patent were made in 1776; therefore good under this Act, and is a Lease in perpetuity, because made in compliance with its provisions, and which are the same as originally established by 21 James, being a continuation of the constitution; and our Lease is now good AGAINST THE PRESENT KING and all others who may, at any time hereafter come to, have, inherit, or enjoy the said Duchy, for so long as the Dukedom remains in existence.

16th George 3, 1775, c. 10.

AN ACT to enable his Majesty to make Leases, Copies, and Grants of Offices, Lands, and Hereditaments, parcel of the Duchy of Cornwall, or annexed to the same, *and for other purposes therein mentioned.*

WHEREAS his Royal Highness George, Prince of Wales, now stands seised of the Duchy of Cornwall and the possessions thereof; and whereas it is necessary to enable his Majesty to grant Offices, and to make Leases and Grants by copy of Court Roll, of Lands and Hereditaments, parcel of the said Duchy, or thereunto annexed or belonging during the minority of his Royal Highness: Be it therefore Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lord's spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases and Grants made or to be made, by letters patent or indentures under the Seal of Great Britain, or Seal of Court of Exchequer, or by copy of Court Roll, according to the custom of the respective Manors, within *seven* years next ensuing, of any Offices, Messuages, Parks, Lands, Tenements, or Hereditaments, (other than Honours, Lordships, or Manors,) parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and contents of the same Copies, Leases, and Grants, against our Sovereign Lord the King, his heirs and successors, his Royal Highness George Prince of Wales, and against all and every other person and persons who shall *at any time hereafter* have, inherit, or enjoy the said Duchy, by force of any Act of Parliament, or by any other limitation whatsoever.

PROVIDED always, That every such Lease or Grant so made or to be made, be not for more than one, two, or three lives, or for

OBSERVATIONS.

Sir William Clayton's Letters Patent were granted immediately after the passing of this Act, and comes within its provision; and, therefore, is as good a Lease, as if renewed for the original term of 31 years; or, as if it had been an original Lease, under 21st Jas.; and is good against the present King.

Our Letters Patent were granted for 31 years, which were always renewed under former Acts; but, as we now wanted to grant out-building Leases of 65 years, we were obliged to apply to the Duchy to exchange our tenure or Lease of 31 years, to another description of Lease or tenure warranted by the Acts, *i. e.* for 99 years determinable on three lives; out of which 65 years certain might be made up to the builders, by renewing with the Duchy on the dropping in of any life, and granting the builders fresh Leases, so as to carry them through their respective terms. It was to the Duchy's interest to consent to this, as the more we could get the estate improved, the greater would be their revenue, or fines, to be taken on renewals—their revenue depending on the tenant's income from the estate, and following that as the shadow follows the substance.

It is quite clear if we had taken a Lease in 1777, for a 99 years' term absolute, such Lease would have been null and void under 16th Geo. 3d, and all former Acts; and no building Leases could have been granted under it.

Application was made for such an interest as would enable the Grantee to grant building Leases; and a Lease of 99 years determinable on three lives was given for that purpose. Is not the tenant-right of renewal thus tacitly admitted by the Duchy? not by this only, but by granting the Letters Patent to the use of the marriage settlement, such uses being indefinite. It appears to have been understood at this time, by all parties, that a tenant-right of renewal existed, and never was doubted till this property became so valuable, by being covered with buildings and became the envy of the Officers of the Duchy. There are 1000 houses built upon it; and if they could get possession of it, and divide it into as many holdings it would bring a vast increase of Revenue into their own pockets in the shape of Fees.

one and thirty years or under, or for some term of years, determinable upon one, two, or three lives, and not above: And if such Leases or Grants be made in reversion or expectancy, that then the same, together with the *Estates* in possession, do not exceed three lives, or the term of one and thirty years, or some term of years determinable upon two or three lives, and be not in anywise dispunishable of waste, and so as upon every such Lease or Grant there be or shall be reserved the ancient or most usual rent or more, or such rent as hath been reserved, yielded, or paid for the Lands or Hereditaments for the greater part of twenty years next before the making of the said Leases or Grants: and where no such rent hath been reserved or payable, that then upon every such Lease there shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Messuages, Parks, Lands, Tenements, or Hereditaments, contained in such Lease or Grant; And all Leases and Grants otherwise made or to be made shall be null and void.

And be it further Ordained and Enacted by the authority aforesaid, That all covenants, conditions, reservations, and other agreements contained in every Lease, Grant, or Copy of Court Roll, made or to be made as aforesaid, shall be good and effectual in law, according to the words and contents of the same, as well for and against them to whom the reversions of the same Lands, Tenements, and Hereditaments shall come, as for and against them to whom the *interest* of the said Leases, Grants, or Copies shall come respectively, as if our Sovereign Lord the King's Majesty, at the time of making such covenants, conditions, and reservations, and other agreements, were seized of an absolute estate in fee simple in the same Lands, Tenements, or Hereditaments.

Saving always, to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators, and assigns, (other than our sovereign Lord the King and his heirs and successors, and the Duke and Dukes of Cornwall for the time being, and his and their heirs, and all and every other person and persons that shall *hereafter* have, inherit, or enjoy the said Dukedom of Cornwall, by force of any Act of Parliament or other limitation whatsoever); All such rights, titles,

OBSERVATIONS.

This, and all the preceding Acts, are a continuance of the same tenure to the tenants, which was granted by 21 James. The Acts which follow this, as it seems to me, were procured to be passed in direct violation of all preceding Acts; and if they are to be considered to operate upon this Estate of Sir William Clayton's, then, as it appears to me, the Parliament has been made to legislate on the property of the Subject, without giving him the slightest notice, which seems to me to be contrary to the spirit of the Constitution, not only of the Duchy, but of the Kingdom; and are Acts likely to bring the King into disgrace with his Subjects, which I trust and hope will be prevented. If the Statute of 21 James, and the subsequent Statutes, is the Law to govern this Case, then, the constitution of the Duchy ought to be respected, and not violated to the great injury and oppresion of so many hundreds of families, who are the King's faithful subjects. But, perhaps, all this might have been done in that ignorance of the Law which governs the Duchy property; which may have arisen from lapse of time and new succession of Officers.

estates, customs, *interests, tenures,* claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Offices, Lands, Tenements, or Hereditaments, or any of them, as they or any of them *had or ought to have had* before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been had or made, This Act or any thing therein contained to the contrary notwithstanding.

COPY OF LETTERS PATENT,

Dated 5th March, 1777.

COUNTY OF SURREY.

Demise

TO

SAMBROKE FREEMAN, ESQ.

Of Messuages and Lands, part of Manor of Kennington, in or near the parish of Lambeth, in Surrey, for 99 years, if the said William Clayton the infant, George Clayton, and James Medwin, or either of them, so long live.

FINE £468.

RENT £16. 10*s.* 9*d.*

OBSERVATIONS.

Two existing Leases surrendered on the granting of these Letters Patent.

* This change from a 31 years' term to a 99 years' term, determinable on three lives, was effected for the purpose of enabling the tenant to grant building Leases, and is equally as good a Lease under the tenure established by the 21st James, as the former Lease; it being under the provision which authorizes Leases to be made for any term, determinable on one, two, or three lives.

* £468. fine, being 1½ year's rent received by Sir William Clayton's father from his Sub-lessees, the usual fine paid on a renewal of the former Lease of 31 years. N. B. If the Lease had been intended to have expired on the decease of the three lives without renewal, three times this amount of fine would have been taken; and it seems a pledge given by the Duchy of the basis on which all future fines were to be calculated, and that another fine was looked for as soon as a life dropped, in order to keep up a regular succession of revenue to the Duchy, according to the original intention of 21 James.

THE granting the Letters Patent to the Trustee of the Settlement, *to the uses of the Settlement*, shews the Duchy's intention to renew, on the decease of each life, for the then residue of the term; or, how otherwise could it extend to those uses which were indefinite? This seems to shew the tenant was considered as having a perpetuity of interest.

LETTERS PATENT.

GEORGE THE THIRD, by the Grace of God, of Great Britain, France, and Ireland King, Defender of the Faith, and so forth, TO ALL to whom these our Letters Patent shall come, Greeting. KNOW YE, that We, as well for, and in consideration of the surrender of a Lease, heretofore made by our late Royal Father, Frederick Prince of Wales, under his great seal, bearing date the eighteenth day of July, which was in the year one thousand seven hundred and forty seven, of the Premises hereinafter demised and granted, for the term of thirty-one years, from the feast of the Annunciation of the blessed Virgin, then last past, to William Clayton, Esquire; as also of one other grant or demise of the same Premises, made by and under our Exchequer seal, bearing date the first day of September, which was in the year one thousand seven hundred and sixty-five, unto the said William Clayton, for the further term of eighteen years, to commence from the the fifth day of April, which will come, and be in the year of our Lord one thousand seven hundred and seventy-eight, as of a fine of four hundred and sixty-eight pounds* of lawful money of Great Britain, by our beloved subject Sambroke Freeman, of Fawley Court, in the County of Bucks, Esquire, *surviving Trustee in the Settlement* made on the marriage of William Clayton, of Harleyford, in the County of Bucks, Esquire, with Maria Elizabeth Catharina Lloyd, his late wife, deceased, bearing date the tenth day of June, which was in the year one thousand seven hundred and sixty-one, before the sealing these presents, paid to Thomas Somers Cocks, Gentleman, Deputy to Edward Elliot, Esquire, our Receiver-general of our Duchy of Cornwall, as by a receipt under the hand of the said Thomas Somers Cocks, bearing date the sixth day of January last, remaining in the custody of our Clerk of the Pipe, in our Court of Exchequer, appears as for and in consideration of the yearly rent hereinafter reserved; and of the Covenants, Conditions and Agreements herein contained; and also by and with the advice of our right-trusty and well-beloved Councillor, Frederick North, commonly called Lord North, Knight of the Most Noble Order of the Garter, First Commissioner of our Treasury of Great Britain, and Chancellor and Under Treasurer of our Exchequer; and of our trusty and well-beloved George Lord Onslow, Charles Townsend, Esquire, Francis Conway, commonly called Lord Viscount Beau-

FROM 1670 to 1777, Sir William Clayton's father, and his ancestors, were used to grant Under Leases of pieces and portions of this Land (formerly marshy land) to sub-tenants, who had used again to underlet it to others, and so by degrees the Land was drained and improved since the property came into the Clayton family, from about £ 160. per annum, to £ 1,238. per annum, which Sir William Clayton is now in receipt of from his Sub-lessees, and the rack-rent Value of the property, is estimated at £23,000. per annum, but over which Sir William has no control. Notwithstanding which, the Commissioners of the Duchy estimated their fine for putting in one life, in the room of George Clayton, Esq., deceased, at £72,000, to be paid by Sir William; and because he is not able to pay it, have actually proceeded to grant reversionary Leases to others, to take effect after the death of Medwin then aged 76, and the other 73; intending to oust Sir William of the Estate, leaving him at the mercy of his Sub-lessees on his Covenants to renew, and to grant them fresh Leases, so as to carry them through their respective terms. Since which Medwin is lately dead, and Sir William is now the only remaining life.

Lives.

George Clayton, ...died in 1828.
James Medwin, ... died in 1833.
Sir Willam now living, the only remaining life.

champ, and Charles Walfram Cornwall, Esquire, Commissioners of our said Treasury; HAVE demised, granted, and to farm letten, and by these presents, for ourself, our heirs and successors, Do demise, grant, and to farm let unto the said Sambroke Freeman, ALL THAT capital Messuage of the Manor of Kennington, in or near the Parish of Lambeth, in our County of Surrey, with its appurtenances. AND ALL that great Barn, with a Parcel of Land adjoining to the same, containing by estimation eight acres, heretofore in the tenure of Paul French or his Assigns, and now or late in the tenure of Henry Bethwyn, or his Assigns; and all that Close, with the appurtenances, called the Brick Field, containing by estimation 4 acres, heretofore in the tenure of the said Paul French, or his Assigns, and now or late in the tenure of the said Henry Bethwyn; and all that Parcel of Land or Ground, with the appurtenances, containing by estimation fourteen acres, heretofore in the tenure of Ann Hinde, or her Assigns, and now or late in the tenure or occupation of Robert Skinner; AND ALSO all that Parcel of Land or Ground, with the appurtenances, containing by estimation twenty acres, heretofore in the tenure of the said Ann Hinde, or her Assigns, and now or late in the tenure or occupation of Cook. And all those six Cottages at the Butts, with the appurtenances, heretofore in the tenure of the aforesaid Ann Hinde, or her Assigns; and now or late in the tenure or occupation of the Widow Hill, John Holme, and others. AND ALSO all that Parcel of Land, Meadow or Pasture, with the appurtenances, containing by estimation forty acres, lying near the common, called Kennington Common, heretofore in the tenure of Dover, or his Assigns, and now or late in the tenure or occupation of John Adams, James Perrot, and Francis ———, and others. And all and singular houses, edifices, structures, barns, stables, dove houses, yards, orchards, gardens, lands, tenements, meadow pastures, waters, water-courses, and all other profits, commodities, and hereditaments whatsoever to the said Premises belonging or appertaining, and with the same heretofore usually demised, excepting nevertheless, and always reserving to us, our heirs and successors, all that capital messuage or mansion-house, called Vauxhall, situate and being in or near the Manor of Kennington aforesaid, and all houses, structures, and the appurtenances to the same belonging,

* The timber trees, mines, quarries, and royalties are not allowed to be leased. It appears Sir William's father reserved to himself a moiety of profits of the gravel dug from the premises in his Leases to his Sub-lessees. This shews an act of ownership in the Land, and justifiable in the way of improvement; and the Duchy revenue would be increased thereby.

21st Geo. II. When no Act to authorize it was in existence, as I can find, but as all Leases were always made good by the next Act, they were not long before they were legalized.

☞ It was necessary under the Act of 16th Geo. III. which was a continuation of the constitution as established by 21st James, to make the Lease determinable on three lives, in order to make it a valid Lease, as a Lease otherwise granted would have been void; it was so made to enable the tenant for life, under the settlement, to grant Building-terms to the Builders, at the same time securing to the Duchy their usual fines on renewal, as the lives dropt, in compliance with the rules laid down by 21st James. The words term and time are evidently written on an erasure, which is somewhat remarkable, being an unusual expression, and explains that although the Leases are established by 21st James to be perpetual Leases, yet the tenant was not to be allowed to have more of that interest than thirty-one years, or three lives, at one time; this being the means by which the perpetuity of interest is to be had and enjoyed by the tenant, as well as the means by which the revenue is to arise to the Duchy by renewal fines.

One of the trusts of the Settlement is, that the Trustees should, *by and out of the rents and profits of the Premises,* from time to time, renew; and how could he do so if a fine £ 72,000. is to be demanded, as it would have taken four times the amount of the rents and profits to have paid the premium for insuring such a sum?

and also all great and* timber trees, mines, quarries, and royalties, in and upon the aforesaid Premises, or any part or parcel thereof; all which said Premises are parcel or reputed parcel of the Demesne Lands of the said Manor of Kennington, and parcel of the possessions of the Duchy of Cornwall aforesaid, and were (except as hereinbefore is excepted) demised by the before-mentioned Indenture of Lease, under the great seal of our late Royal Father, when Prince of Wales, bearing date the eighteenth day of July, in the twenty-first year of the reign of our late Royal Grandfather, his late Majesty, King George the Second, to the said William Clayton, for the term herein-before-mentioned, under the yearly rent therein mentioned; and were afterwards, by our Letters Patent, under our Exchequer seal, bearing date at Westminster the said twenty-first day of September, in the fifth year of our reign, one thousand seven hundred and sixty-five, demised (except as herein before is excepted) unto the said William Clayton, his Executors, Administrators, and Assigns, for the term herein-before-mentioned, under the rent and convenants therein expressed, TO HAVE HOLD AND ENJOY the said capital Messuage or Mansion House, and ALL and singular other the Messuages, Lands, Tenements, Hereditaments and Premises, herein-before-mentioned, except, as hereinbefore is excepted, and in and by the said several recited Letters Patent, and by these our Letters Patent, demised and granted, or meant mentioned or intended so to be, with their and every of their rights, members, and appurtenances, unto the said Sambroke Freeman, his Executors, Administrators, and Assigns, for and during and until the full end TERM AND TIME of ninety-nine years, to begin, commence, and be computed from the day of the date of these presents; if William Clayton, aged about fourteen years, and George Clayton, aged about eight years, sons of the said William Clayton, and James Medwin, one of the sons of Mr. Luke Medwin, of Great Marlow, in the said County of Bucks, shop-keeper, any or either of them, shall so long live, *Upon and subject nevertheless to the trusts declared of and concerning the said demised Premises in and by the said recited Indenture of the tenth day of June,* 1761, RENDERING AND PAYING therefore yearly, and every year, to us, our heirs and successors, for and in respect of the said demised Premises, the yearly rent or

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THIS £16. 10*s*. 9*d*. being the ancient rent reserved, is in compliance with the provisions of 21st James, and shews the Estate renewable on the dropping in of a life, otherwise we should have had a three lives absolute of 86 Acres of Land for the low rent of £16. 10*s*. 9*d*., and the Duchy must have been without revenue.

THE rent is reserved for the *whole* term of 99 years, in the same manner as it was in the 31 years' Lease, which was always renewed; and shews the whole term was intended to be granted and to be kept up by renewals as the lives dropt; and it seems no other construction can be put on the transaction, but that it was a change of tenure only from one description to another, more appropriate for the purpose, in order to benefit both parties.

THIS Covenant extends to pay the rent *during the term*, without saying determinable as aforesaid.

No reservation of any liberty for the Surveyor of the Duchy to inspect the intended buildings, or to come on the premises.

THIS Covenant to repair *during the term granted*, without saying determinable as aforesaid, was necessary to protect their revenue. There is no Covenant to compel the tenant to build a single house, which shews the property was in the tenant and not in the Duchy

THIS Covenant to keep and leave in repair all erections and buildings erected during the term, is for protection of the revenue of the Duchy, but it subjects Sir William Clayton to great responsibility, inasmuch, if a whole street were to be burnt down, he must rebuild the same, to secure the revenue to the Duchy, and no Grantee would have taken upon himself that responsibility, unless he had a perpetuity of interest.

BOLTS, Bars, &c. These words are used generally in all Building Leases; no such words appear in any former grant, which shews it partook of something of the nature of a Building Lease, though there are no Covenants shewing the property was in the Duchy, only what was necessary to protect their revenue. If the property had been in the Duchy there would have been the usual Covenants as in other Building Leases, taken from large proprietors.

sum of £16. 10*s*. 9*d*. freed and discharged from any taxes, rates, or deductions thereout, of lawful money of Great Britain, to the hands of our Bailiff or Receiver-general for the time being, of our Duchy of Cornwall, at or upon the feast or feasts days of St. Michael the Archangel, and the Annunciation of the Blessed Virgin Mary, in each and every year, by even and equal half-yearly portions or payments, during the said *whole* term of ninety-nine years, in and by these presents granted or mentioned, or intended to be granted as aforesaid, the first payment thereof to begin and be made at such of the said day or days of payment, as shall first and next happen after the commencement of the *said term hereby granted.* AND the said Sambroke Freeman, for himself, his Heirs, Executors, and Administrators, doth covenant, promise, grant and agree to and with us, our heirs and successors, by these presents, in manner and form following, that is to say: that he the said Sambroke Freeman, his Executors, Administrators and Assigns, shall and will, from time to time, *during the term hereby granted,* well and truly pay, or cause to be paid unto us, our heirs and successors, the said yearly rent or sum of £16. 10*s*. 9*d*. herein before reserved and made payable as aforesaid, freed and discharged from any rates, taxes, or deductions thereout, at such days and times, and in such manner and form as is herein before expressed and appointed for payment thereof; AND ALSO shall and will from time to time, and at all times hereafter, *during the said term hereby granted,* when and as often as need and occasion shall be and require, at his and their own proper costs and charges, well and sufficiently repair, amend, support, uphold, maintain, scour, cleanse, and keep as well the said Messuages or Tenements, and Premises hereby demised, As ALL OTHER Messuages, Erections and Buildings, which, *during the term herby demised and granted,* shall be erected, standing or being on any part of the said hereby demised Premises, in, by, and with all and all manner of needful and necessary reparations and amendments whatsoever And the said Premises, and every part of the same, together with *all bolts, bars, doors, chimney-pieces, windows, shutters, floors, slabs, vaults, drains, sinks, gutters, wydraughts,* and all other things usually deemed and reputed to belong to, or to be fixed to the said Premises hereby demised, so well and sufficiently repaired and

OBSERVATIONS.

THERE is no restrictive Covenant to prevent the Grantee from Assigning or Mortgaging this property, or dealing with it in any manner he thinks proper; all the Duchy required was, that such Assignments should be enrolled in their Office, in order they might know their tenant, and of whom to collect their rent and fines for renewal. The tenant was not compelled to build a single house on the Estate, and might have let the property remained as it was, and why? because the property was his own, and he had a right to do as he pleased with it.

BUT the greatest confirmation of its being intended to answer the purpose of a Building Lease is, that ROBERT TAYLOR, Esq., (afterwards Sir Robert Taylor,) *who was Surveyor to the Duchy at this time*, was also employed by Sir William Clayton's father to carry the intended building arrangement into effect. He procured a Building Act to be passed, enabling Sir William's father, as the tenant for life, to grant Building Leases to Builders, and to Covenant with them to renew, as the lives dropt, with the Duchy, and to grant them fresh Leases so as to carry them through their Building terms; he paid the expenses of that Act, and the fine and expenses of those Letters Patent, and his own charges for planning, measuring, &c., which amounted altogether to £ 1,000., and for security of which, he took a Mortgage of this Estate from the Trustee of the Settlement, with all right and benefit of renewal thereto belonging, and which Mortgage is enrolled in the Duchy Office. And, above all, a Letter has been recently discovered of this Robert Taylor's to Sir William Clayton's father, wherein he informs him of having let part of the Estate to one Tegetmeyer, for 99 years absolutely, as Sub-lessee; and the present Mr. Michael Angelo Taylor, his Son, remembers the transaction, and says it was always understood that it was to answer the purpose of a Building Lease. Would the Duchy's Surveyor have done this, had there not been a tenant-right of renewal?

MR. CRAIG, who succeeded to Mr. Taylor's business, always considered it in the nature of a Building Lease, and was the Agent of Sir William in letting the Land for Building purposes, finding the money to carry on the improvements for Sir William, paid off the mortgage to Mr. Taylor, and lent other monies up to the amount of £ 6,000., which has been discharged but very recently by yearly instalments.

AT any rate, Sir William Clayton is entitled to be placed in the same situation as others who take land to relet out again for building purposes, without prejudice to his tenant-right of renewal during the 99 years' term, and after it shall have expired.

amended, at the end or other determination of the said term, shall and will peaceably and quietly leave, surrender, and yield up to us, our heirs and successors. PROVIDED ALWAYS, nevertheless, that if the said yearly rent or sum of £16. 10*s.* 9*d.* in and by these presents reserved as aforesaid, or any part thereof, shall at any time hereafter happen to be in arrear, or unpaid by and during the space of 60 days next after either or any of the said days, at or upon which the same ought to be paid as aforesaid, or if these our Letters Patent *and all Assignments thereof,* which shall or may at any time hereafter be made of these our Letters Patent, or of the Premises hereby demised, or any part thereof, shall not be enrolled before our Auditor of our said Duchy of Cornwall, or his Deputy, or Deputies for the time being, within the like space of six months from their respective dates and minutes or docquets thereof, entered in the Office of our Surveyor General of our Duchy of Cornwall for the time being, within the like space of six months from the respective dates, that then and from thenceforth, in any such case, or in any such default, this our present Demise and Grant, and all and every such Assignments thereof, shall and may be accounted null, void, and of no force or virtue; any thing in these Presents contained to the contrary thereof in any wise notwithstanding. IN WITNESS whereof, we have caused these our Letters to be made patent. Witness our above-named right-trusty and well-beloved Commissioners of our Treasury aforesaid, at Westminster, the 5th day of March, in the 17th year of our Reign, 1777. SHELLEY.

By warrant of the Lords Commissioners of the Treasury.

Ex^d. Edward Woodcock
D. C. of the Pipe.

Inrolled in the Auditor's Office of the Duchy of Cornwall, the 11th day of March, 1777. RICHD. GREY, *D. Auditor.*

A Minute or Docquet of these Letters Patent, was entered in my office, this 13th day of March, 1777.

F. BAYNTUN.

OBSERVATIONS.

This 33rd Geo. 3rd, is full of inconsistences; and is an Act procured to be pas ed, with a view, as it seems to me, to do away our tenant-right of renewal; and to break up the constitution, established by 21 James 1.

Here, the old doubt is conjured up again from the grave, in which it had been buried 170 years, and over which the new tenure was built; and established by 21 James. And this Act, as it seems to me, was intended to put the tenant-right of renewal in its place, for it carefully avoids and passes over all the other Acts which mention renewals; and, it seems to me, that those who had the management of this affair, saw that the tenants had nearly lost sight of their tenant-right of renewal, as established by 21 James, and procured this Act to be passed, effectually to deprive them of it. You will see the great inconsistency and absurdity of this Act; for, whilst it professes to give the tenants good and indefeasible Estates, to encourage them to lay out their money in building upon, and otherwise improving the property; on a term of 31 years or 3 lives, it declares, that is not sufficient for the purpose. This was evidently to make it appear there was no tenant-right of renewal attached to the 31 years or 3 lives, established by 21 James; and to cast it into oblivion, so that it might be lost sight of for ever.

The enacting clause makes Leases good in perpetuity, same as the other, provided they are not made for more than 31 years or 3 lives

The Act passed to destroy the tenure given by 21st James 1st, but which supports it.

33rd George 3rd, 1792, c. LXXVIII.

AN ACT to enable his Royal Highness George, Prince of Wales, to make Leases, Copies, and Grants of Offices, Lands, and Hereditaments, parcel of his Royal Highness's Duchy of Cornwall, or annexed to the same; *and for other purposes therein mentioned.*

(17th June, 1793.*)*

WHEREAS his Royal Highness George, Prince of Wales, now stands seised of the Duchy of Cornwall and the possessions thereof, of an Estate of inheritance under a special form of limitation, differing from the ordinary rules of inheritance at common law, whereupon some questions may grow, what *Estates* in the same the said most excellent Prince may legally grant, and whether Leases and Grants made by his said Royal Highness, of any Manors, Offices, Lands, Tenements, or Hereditaments, parcel of the said Duchy, or annexed to the same, will be good and effectual in law, longer than for the life of his said Royal Highness: for avoiding of which doubt, *and for the ease and quiet of the minds of such persons as have taken,* or hereafter shall take, Leases or Grants from the said Prince, *and to the end that such persons may be sure to have good and indefeasible Estates, and be encouraged to lay out monies in building* and repairing, or otherwise improving the several Lands and Tenements *to them demised or granted,* and to be demised or granted: Be it Enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Leases or Grants *made* or to be made by his said Royal Highness, by letters patent, or indentures, under the Great or Privy Seal of his said Royal Highness, or by Copy of Court Roll, of any Manors, Offices, Messuages, Parks, Lands, Tithes, Tenements, or Hereditaments, parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and

OBSERVATIONS.

Here, the former declaration, that all Leases otherwise made or to be made, shall be void, is purposely omitted; and a 99 years' term absolutely, for the express purposes of building or improving the waste lands, is introduced, which seems to me, not only a violation of all former Acts, but a direct violation of the rights and interests of the tenants.—The 21 James being as much for the express purposes of building and improvements, as this 33rd Geo. 3rd can be, and which was unnecessary; for it is positively expressed, by 21 James, that it was the intention of that Act to give the tenants such an Estate and interest in the land as would be sufficient for that purpose, and this was done by giving them renewable Leases in perpetuity, and which Leases were given of necessity, there being no other means of getting the lands built upon and improved, and of providing a revenue for the Duchy at the same time. I should like to be informed, how these two objects could have been accomplished otherwise.

Note.—If any waste lands remain unimproved, never having been leased under 21 James, then this Act might be allowed to operate on those lands, but not on any lands of which the tenants have taken Leases under the tenure of 21 James.

All former Acts have been careful to preserve the constitution from violation, by declaring that all Leases otherwise granted or to be granted should be null and void, but here it is purposely omitted, which shews a premeditated design to destroy the constitution, by taking away this barrier.

Here it is said, that a 31 years' term or 3 lives, is not a sufficient interest to give to the tenants to improve the waste lands of the said Duchy. How then can it be argued that a 31 years or 3 lives, was sufficient, by the statue of 21st James 1, not only to improve the lands, but to build houses thereon, paying not only a ground-rent, but 3 fines during the Lease, equal to one year's improved rent in five. This is a most glaring inconsistency, and cannot be reconciled. Here they begin to call the lands, the lands of the Duchy; whereas, in all former Acts, they recognise the lands to be the lands of the tenants, held under the Duchy; this again is another inconsistency.

contents of the said Leases or Grants, against his Majesty, his heirs and successors, and against his said Royal Highness, and his heirs, and against all and every person and persons who shall or may *inherit or succeed* to the said Duchy, according to the said limitation or otherwise.

PROVIDED always, that every such Lease or Grant, so made or to be made, of any Manors, Offices, Messuages, Parks, Lands, Tithes, Tenements, or Hereditaments in possession, be and shall be made for three lives or fewer, or for thirty one years or under, or for some term of years determinable upon one, two, or three lives, and not above: and if such Lease or Grant be made in reversion or expectancy, that then the same, together with the Estates in possession, do not exceed three lives, or the term of thirty one years, and be not in any wise dispunishable of waste, and so as upon every such Lease or Grant there be or shall be reserved the ancient or most usual rent, *or more*, or such rent as hath been reserved, yielded, or paid for such of the premises as are or shall be contained therein, for the greater part of twenty years next before the making of the said Leases or Grants, and shall be reserved due and payable to such as have the inheritance or other estate of the said Duchy; and where no such rent hath been reserved or payable, that then upon every such Lease or Grant there be or shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Manors, Messuages, Parks, Lands, Tithes, Tenements, or Hereditaments contained in such Lease or Grant.

AND whereas various applications have been made to his said Royal Highness, as well by the tenants of the said Duchy of Cornwall, as by other persons, for Grants of *certain parts* of the said Duchy, for such term of years as would enable the Lessees to erect substantial buildings thereon, and to improve the waste Lands of the said Duchy, which it is alledged cannot be undertaken by the Lessees, *unless they are secured by a longer interest in the premises than thirty one years, or a term of years determinable upon three lives;* Be it further Enacted by the authority aforesaid, that it shall and may be lawful for his said Royal Highness,

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N. B. The Statute of 16 Geo. 3d, under which our Letters Patent were granted, as well as several of the preceding Acts, declares, that all Leases and Grants, *made or to be made* contrary to the provision of James 21st, shall be *null and void.*

This Act is procured to be passsed in direct violation of all preceding Acts, evidently for the purpose of destroying or casting into oblivion the tenant's right of renewal. It is an extraordinary Act—for, after the Parliaments have, for the last 170 years, been passing Acts from time to time, professing to give to the tenants such good and indefeasible Estates, as would encourage the tenants to build upon and otherwise improve the Lands, by giving them a renewable term of 31 years or a 3 lives; it all of a sudden seems to have discovered, that such a term is not sufficient for the very purpose for which it had been granted, 170 years before. They have very cunningly taken the same Preamble as in 21 James, and as cunningly, passed over every Act speaking of and recognizing the right of renewal; thinking, that no person would ever be at the trouble of searching and inspecting into the tenure. And what is still more extraordinary, that they here say a 31 years or 3 lives is not a sufficient interest even to improve waste land; how then can it be a sufficient interest, not only to improve waste land, but also to build houses upon it, without a tenant-right of renewal? Compare this Act with 21 James and the subsequent Acts, and you will find it a direct violation of the constitution.

This Act seems to me a complete contradiction of itself; it blows hot and cold, and is not in any manner reconcileable to common sense. It completely exposes the purpose for which it was designed—but, the *Saving Clause* will, I presume, protect Sir William's interest from being violated, and from the operation of this and the subsequent Acts; but, you will find in the last Act 1 & 2 Wm. 4th, Sir William, with all other Lessees under the Duchy, are even shut out of the benefit of the Saving Clause, so fully determined are the Duchy to lay hold of this property if they can, by breaking up the constitution root and branch.

and his said Royal Highness is hereby empowered to make Leases and Grants, by letters patent or indentures under the Great or Privy Seal of his said Royal Highness, of *any Lands*, Tenements, or Hereditaments, parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, for any term of years not exceeding the term of *ninety-nine years, expressly* for the purpose of improving the same, by erecting substantial buildings thereon, or for the purpose of improving *waste Lands by cultivation*, or otherwise: provided that upon all such Leases or Grants so to be made, *improved annual Ground Rents be reserved* and made payable to his said Royal Highness, or to such as shall have the inheritance or other estate of the said Duchy; and that in all such cases, Leases, or Grants, so to be made, for terms exceeding thirty one years, or exceeding the usual term determinable upon three lives, no fines or other considerations be taken by his said Royal Highness, further or other than the improved annual Ground Rents hereby directed to be reserved as aforesaid.

And be it further Enacted by the authority aforesaid, That all covenants, conditions, reservations, and agreements contained in every such Lease or Grant, made or to be made as aforesaid, shall be good and effectual in law, according to the words and contents of the same, as well for and against them to whom the reversion of the said Manors, Offices, Messuages, Parks, Lands, Tithes, Tenements, or Hereditaments shall come, as for and against them to whom the interest of such Leases or Grants shall come respectively, as if his said Royal Highness the Prince, at the time of making such covenants, conditions, reservations, and agreements, had been or were seised of an absolute Estate in fee simple, in the same Manors, Offices, Messuages, Parks, Lands, Tithes, Tenements, or Hereditaments.

Saving always to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and assigns, (other than his said Majesty, his heirs and successors, and other than his said Royal Highness the Prince, and his heirs, and all and every person and persons that shall *hereafter* have, inherit, or enjoy the said Duchy of Cornwall, by

force of any Act of Parliament, or other limitation whatsoever): all such rights, titles, estates, customs, *interests, tenures,* terms, claims and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Manors, Offices, Messuages, Parks, Lands, Tithes, Tenements, or Hereditaments, or any of them, parcel of or annexed to the said Duchy of Cornwall, as they or any of them *had or ought to have had* before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been made: this Act, or any thing herein contained to the contrary notwithstanding.

This Kennington property is now the most valuable Estate held under the Duchy, and no wonder they may wish to get it into their own hands.

Envious at the success Sir William Clayton had had, in getting all the Land covered with buildings; these Acts were, as it seems to me, passed with a view to deprive him of the Estate, and put themselves into his situation.

This Act prescribes a different mode of granting Leases than ever was before, with a view to throw every obstacle in our way; and, it seems to me that a special Act will be necessary to enable his Majesty, by Letters Patent, to grant a renewed Lease to Sir William Clayton, and to free the Estate from the operation of those Acts; and that it will be necessary to get all the three last Acts repealed, to restore the constitution to its original purity, and the tenants to their lawful rights and interests.

N. B. An Act was passed 3d Geo. 4th c. 78, which is verbatim the same as the following.—

1st and 2nd William 4th, c. 5, 1831.

AN ACT to enable His Majesty to make Leases, Copies, and Grants of Offices, Lands, and Hereditaments, parcel of the Duchy of Cornwall, or annexed to the same.

WHEREAS his most excellent Majesty now stands seised of the Duchy of Cornwall, and the possessions thereof; and whereas some doubts may arise in relation to his Majesty's making Leases and Grants of Offices, Lands, and Hereditaments, parcel of his said Duchy, or thereunto annexed or belonging; for obviating whereof, and *for the ease and quiet of the minds of such persons as have taken,* or shall hereafter take Leases from his said most excellent Majesty, *and to the end that such persons may be sure to have good and indefeasible Estates, and be encouraged to lay out monies in building and repairing, or otherwise improving the several Lands and Tenements to them demised, or to be demised;* Be it therefore enacted by the King's most excellent Majesty, by, and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That during such time as the said Duchy of Cornwall shall remain vested in his Majesty, it shall and may be lawful for his Majesty from time to time, by Warrant under his Sign Manual, to be countersigned by any three or more of the Commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland, to authorize such and so many of the regular officers of the said Duchy, who by virtue of their several appointments and offices, are concerned in the general superintendence and management of the *Revenues* and Affairs of the said Duchy, being not more than five, and not less than three in number, as his Majesty may think fit to *Demise or Lease,* in his Majesty's name, and on his Majesty's behalf, by deed under the hands and seals of any two or more of them, all and every the Manors, Messuages, Parks, Tenements, Lands and Hereditaments,

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The former Acts, which make null and void all Leases granted or to be granted, contrary to the provisions of 21 James I, stand unrepealed.—How then can Leases granted under the authority of this Act be good? both being contrary to each other.

Officers appointed to become judges in their own cause.

The same proviso as in the other Acts.

Here is the same absurdity in this as in the last Act. After professing to give the tenant such a good and indefeasible Estate, as would be sufficient to encourage him to lay out his capital in building and improving: and, after pretending to give him a 31 years' or 3 lives, for that purpose, it recites such an interest is not sufficient. It had been sufficient to get the Land all covered with Buildings, because of the tenant-right of renewal, which otherwise would never have been the case.

parcels of the possessions of the said Duchy of Cornwall, or annexed to the same, provided that the Lessee or Lessees, in such Leases respectively to be named, do and shall duly execute a counterpart or counterparts of the Lease or Leases so to be made to him, her, or them respectively; and also to constitute and appoint, in his Majesty's name, and on his Majesty's behalf, by Deed or or other Instrument, executed by any two or more of them, all such persons as shall be specially named by his Majesty to be Stewards Commissioners for *assessing the Ancient Duchy Lands and Tenements*, or other Officers of the said Duchy, during his Majesty's pleasure, and also to pass the Accounts of all Receivers, Bailiffs, and Collectors, accounting for the Revenues of the said Duchy; and all such Leases or Grants *so made*, or to be made, of any Manors, Messuages, Parks, Tenements, Lands, or Hereditaments, by virtue of such Warrant, shall be good and effectual in law, according to the purport and contents thereof, against our Sovereign Lord the King, his heirs and successors, and against all and every other person or persons, that shall at any time hereafter have, inherit, or enjoy the said Duchy by force of any Act of Parliament, or by other limitations whatsoever.

PROVIDED always, that every such Lease or Grant so made, or to be made, of any Manors, Messuages, Parks, Tenements, Lands, or Hereditaments, in possession, be and shall be made for three lives, or fewer, or for thirty-one years or under, or for some term of years, determinable upon one, two, or three lives, and not above; and if any such Lease or Grant be made in reversion or expectancy, that then the same, together with the Estates in possession, do not exceed three lives, or the term of thirty-one years; and be not in any wise dispunishable of waste; and so as upon every such Lease or Grant there be or shall be reserved the ancient or most usual rent, *or more*, or such rent as hath been reserved, yielded, or paid for such of the premises as are or shall be contained therein for the greater part of twenty years next before the making of the said Leases or Grants, and shall be reserved, due, and payable to such as have the Inheritance or other Estate of the said Duchy; and where no such Rent hath been reserved or payable, that then upon every such Lease or

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See ob. on page 55, A.

All this is contrary to the original tenure, but cannot affect our prior right of renewal.

This, and the two preceding Acts, can only be made to operate upon any part of the Duchy lands, (if any such there are) that have never yet been Leased or granted under the tenure, or upon any Lands which may have become forfeited by the tenants neglecting to renew. They have been procured to be passed without giving any notice to the tenants; and the Parliament seem to have lost sight of the constitution of the Duchy, as established by 21 James 1, by not having protected the tenants from their tenures being thus violated, and have suffered themselves to be imposed upon by those persons who have been instrumental in obtaining those Acts.

This Clause is especially calculated to get the Lands under their controul again, and shews their design in endeavouring to deprive Sir William of his tenure.

This Clause is contrary to the provisions of 21 James; and it would be in vain to attempt to get a renewal under the provisions of this Act, where the terms and conditions are to be settled by those Commissioners. We must therefore contend, we have a right of renewal as by virtue of the original tenure, handed down to us by the Acts prior to those, and that those Acts are not binding upon us, we having taken our tenure under the original constitution, as established by 21 James 1—and we are entitled to have a Lease consistent with it.

Grant there be or shall be reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the Manors, Messuages, Parks, Tenements, Lands, or Hereditaments, contained in such Lease or Grant.

And whereas, certain parts of the said Duchy are capable of considerable improvement by the erection of substantial buildings thereon, and by the cultivation of Waste Lands which cannot be undertaken by the Lessees unless they are secured by a longer interest in the premises than thirty-one years, or a Term of Years determinable upon three lives; Be it further Enacted, That it shall be lawful for the said officers of the said Duchy to be named in his Majesty's said Warrant, and they are hereby empowered, by Deed under the Hands and Seals of any two or more of them, to demise, Lease, or Grant any Lands, Tenements, or Hereditaments, parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, for any term of years not exceeding the term of ninety-nine years, *expressly* for the purpose of improving the same by erecting substantial buildings thereon, *or for the purpose of improving waste* Lands by cultivation or otherwise, provided that the Lessee or Lessess in such Leases or Grants respectively to be named, do and shall duly execute a counterpart or counterparts of the Lease or Leases so to be made to him, her, or them respectively; and further provided, that upon all such Leases or Grants so to be made, *improved annual ground rents* be reserved and made payable, and that in such cases of Leases or Grants so to be made, for terms exceeding thirty-one years, or exceeding the usual term, determinable upon three lives, no fines or other consideration be taken, further or other than the improved annual ground rents hereby directed to be reserved as aforesaid.

Provided always, and be it further Enacted, That the terms and conditions of all Leases and Grants to be granted or made under the provisions of this Act, shall be previously approved by the Commissioners of his Majesty's Treasury, or any three or more of them.

Sir William Clayton's interest in the Estate is protected under the saving clause. But, if a renewal is decreed us, we must not take it under this Act, as the Duchy would have power to dictate the terms and conditions to us, which, if submitted to, might again put the tenure in jeopardy.

"THEIR LESSEES." The procurers of this Act have here even had the audacity to shut Sir William Clayton out of the Saving Clause—and in this without giving him the least notice.

Surely, if ever there was a case that called for the interference of Parliament at their next Meeting, to retract their steps, and redress the wrongs and injuries which have been recently inflicted on the constitution of the Duchy, and on its Lessees, this is that case.

AND be it further Enacted, that all covenants, conditions, reservations, and agreements contained in every such Lease or Grant, *made* or to be made, as aforesaid, shall be good and effectual in law, according to the *words and intent* of the same, as well for and against them to whom the reversion of the said Manors, Messuages, Parks, Tenements, Lands, or Hereditaments, shall come, as for and against them to whom the *Interest* of such Leases or Grants, shall come respectively, as if our Sovereign Lord the King's Majesty, at the time of making such covenants, conditions, reservations, and agreements, had been or were seised of an absolute Estate in fee-simple, in the same Manors, Messuages, Parks, Tenements, Lands, or Hereditaments.

SAVING always, to all and every person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and assigns, (other than his said Majesty, his heirs and successors, and other than the Duke and Dukes of Cornwall for the time being, and his and their heirs, *their Lessees*, and all and every other person and persons that shall hereafter have, inherit, and enjoy, the said Duchy of Cornwall, by force of any Act of Parliament or other limitation whatsoever,) all such rights, titles, estates, customs, interests, tenures, terms, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said Manors, Offices, Messuages, Parks, Tenements, Lands, or Hereditaments, or any of them, parcel of or annexed to the said Duchy of Cornwall, as they or any of them, *had or ought to have had before the making of this Act*, to all intents and purposes, and in as large and ample manner and form as if this Act had never been made; this Act, or any other thing therein contained to the contrary notwithstanding.

OPINION.

Having compiled the foregoing Acts of Parliament, and made my observations thereon, for the use of the Counsel and Solicitors on the part of Sir William Clayton, and having given the case full consideration, with all due respect and deference to the opinion of others; and, in order, as far as my humble abilities will allow me, I will now endeavour to shew this case in its true light, by subjoining my own opinion, which, I trust, I shall be able fully to support, not only from the Acts of Parliament themselves, but from the acts of the parties also; and, although the acts of the parties, or any other corroborating evidence, cannot controul the express words of an Act of Parliament, yet, I consider, where the intent and meaning is doubtful, they may be let in to explain that intent.

The Estate in question, I consider, as far as the surface of the land goes, and I contend for no more, is the property of Sir William Clayton, held under the Duchy of Cornwall, and not the property of the Duchy; the Duchy having no other interest in the Land than their revenue arising from the ancient rent of £16. 10s. 9d. a year; the accustomed fines receivable by them on granting Leases thereof; and on the renewal of such Leases, under 21st James 1st., and the subsequent Statutes before mentioned; and the royalties; with which latter Sir William Clayton has nothing more to do than the Duchy have with the surface. That there is a tenant-right of renewal, which of necessity springs out of the Constitution established by the 21st James 1st. That the tenants have a good and vested Estate in the Land given them by that

Act, which establishes in them a perpetuity of interest, to be had and enjoyed by means of renewable Leases: that those renewble Leases were that part of the measure concocted by Parliament for the benefit of the Duchy, and have nothing to do in limiting the interest of the tenant, except as a means by which he is to enjoy that interest, but were provided only in order to create and secure to the Duchy a regular succession of revenue to arise from fines to be taken on such renewals, and are the means prescribed by the Act, by which the Duchy are to come at their revenue intended them. That the Duchy, so far from retaining any interest whatever in the surface of the Land, after the tenant shall have taken his first Lease thereof under the tenure, have shewn their complete abandonment of it to the tenants ever since the statute of the 21st James 1st., and have never exercised from the period the first Lease is so granted, any legal control or authority over the Land so leased, save what necessary covenants were introduced into the Leases for the protection of their revenue, there never having been any Covenants for the protection of the Land, which, I say, was given to the tenants, and that, even at this moment, the Duchy are so far from having any interest in the Land, or having any right to seize the same into their own hands, that an action may be maintained against any one trespassing thereon by their authority; and that the fines on renewals have never been estimated at more than two years' net rent received by the Clayton family, in the same manner as fines have always been estimated in respect to Copyholds of inheritance, held under the Duchy. That the Lands were originally part of the Lands belonging to the Lord of the Manor of Kennington, and the Clayton family now hold a Copyhold Estate of inheritance under the Duchy, who are the Lords of the Manor, paying a fine on death or alienation, calculated on not exceeding two years' net rent, received by the tenant paying such fine. That it was the intention of Parliament to get the Lands built upon and improved at the tenant's expence, and to give them such

a permanency of interest as would be sufficient to encourage them so to do; and at the same time, and by the same Act, to raise and continue a regular succession of revenue to arise out of those improvements. That Parliament had not only in view the private benefit of the Duchy, but the great advantage the public would receive by this new Constitution; and that it was more of the nature of a public measure than a private one, and therefore the Acts ought to receive a liberal and broad construction instead of a narrow and limited construction. That a thirty-one years' Lease certain could never have been intended for the duration of the tenant's interest for such a purpose, but, on the contrary, a perpetuity of interest was created and vested in the tenants for the purpose of encouraging them to outlay their capital; and that the Lease for thirty-one years or three lives, or some term determinable on three lives, was that part of the measure so concocted by the wisdom of Parliament for the purpose of creating and securing a regular succession of revenue to the Duchy, as I have said before.

These are the propositions which I lay down; I will now endeavour to prove them from the several Acts of Parliament themselves, and confirm that proof afterwards from the acts of the parties, and from other collateral evidence.

Now, in order to make good these propositions, it will be necessary to take into consideration the Charter of Edward the 3rd. *A.D.* 1337, *under which the Duchy itself is holden, and by which he limited the Dukedom of Cornwall, "to his "eldest son Edward the Black Prince, and his heirs, eldest "sons of the Kings of England, for ever; and in default of "such, he directed the lands to revert to the Crown, to be kept "till a Duke became extant, to whom he gave the same in like "manner;" but it so happened this Charter did not authorize any Leases to be made of the Land, and of course no duration of interests could be given to the tenant sufficient to encourage him to make any improvement whatever, the consequence of*

which was, that the Lands for the greater part were lying uncultivated and barren, and no buildings could be erected thereon for want of such permanency of interest.

The Parliament of 21*st James* 1*st.*, 1622, *finding this to be the case, and with a view to get the Duchy Lands built upon and improved at the tenant's expense, and at the same time, with a view also to create and preserve to the then Duke (Prince Charles, afterwards King Charles* 1*st.) and his Heirs and Successors, and all those who should thereafter inherit or enjoy the said Dukedom, a regular succession of revenue to arise out of those improvements, by fines to be taken on granting Leases, and on subsequent renewals thereof, and more especially with a view to the public good, brought a Bill into the House of Commons to effect those great objects. During the progress of the Bill through the House, Mr. Glanville, Member for Plymouth, who appears to have been a leading Member in the House of Commons, and well acquainted with the localities of the Duchy, sat on the Committee appointed to concoct and perfect the measure, and the following words are recorded on the Journals of the House to have been spoken by him on the first reading of the Bill:—* "*Here there must be a perpetual Estate, or else the Lands* "*will grow barren:*" *and again,—* "*This law must be so* "*made as Leases shall at all times be made good.*" *Bearing then this declaration of Mr. Glanville in mind, we will see what the Act of the* 21*st. James* 1*st. has done, and which Act constitutes and establishes a perfectly new tenure or constitution, under which all the tenants of the Duchy are for ever after to hold their Lands.*

In the first place, then, the preamble of the Act of the 21*st. James* 1*st. recites the largest extent of interest which by any possibility, from any accidental and favorable circumstances (as for want of an heir to inherit the Dukedom) the former tenants could enjoy, although such an uncertain interest might in many instances probably last sixty or seventy years; as,*

for instance, supposing a Duke of Cornwall in his infancy, by his guardian, granted a Lease for sixty or seventy years, he, having no son to succeed him in the Dukedom, (as would have been exemplified in our case, had our Lease been taken under the old tenure of Edward 3rd.) such a Lease would be good against him after he became King, for as long a period of that term as he might happen to live: thus it stood under the old tenure. Now, it is evident to my mind, that it was a larger extent of interest than this which this new tenure had in contemptation to give to the tenant, and is it reasonable to suppose that when Parliament were sitting in Committee, in order to concoct a measure for the improvement of the Lands of the Duchy, but they would so plan, contrive, and adopt that measure which would bring about the greatest improvement possible; and is it not certain that the largest extent of interest they gave the tenant, the more encouragement it afforded him to outlay his capital in building upon and otherwise improving the Land; and is it not as certain the smaller the interest given, the lesser the encouragement was afforded the tenants to improve: then can it be supposed that Parliament would be so extremely unwise as to have made choice of this latter plan, by giving the tenant only a thirty-one years' Lease, or three lives certain, which is acknowledged by the Legislature afterwards not to be a sufficient interest even to improve the waste Lands. *How then, I would ask, could it be thought sufficient, not only to improve the Lands but also to erect houses and other buildings thereon, necessary for their occupation, without a right of renewal being attached to such Leases, or a vested interest in perpetuity given to the tenants.*

I think I have sufficiently shewn that this is a very narrow and limited construction of this part of the preamble, and that it was the enlargement of the very largest interest, which, before the tenant could (from the accidental circumstance of their being no heir to inherit the Duchy) before enjoy, which the Act of James had in view, and that the doubt mentioned in the

first part of the preamble was intended to be merged, and was merged, and buried under this newly-established constitution, for we hear nothing more of this doubt throughout all the subsequent Acts, till we come to the 33*rd of George* 3*rd., of which I shall hereafter speak. That the end and principal design of the* 21*st. James* 1*st. is most clearly and distinctly shewn by the latter part of the preamble which we now come to, and which runs thus:—*" *And to the end such persons as* " *have taken, or shall take, Leases from your suppliant may* " *be sure to have* good Estates, and so be encouraged to bestow " charges in the building and maintaining of their houses, and " good manuring of the Manors, Lands, Tenements, or Here- " ditaments, demised, or to be demised to them."

Now, Parliament, in this preamble, having proposed to give to the tenants such good estates *for this purpose; let us see how they have done it: and here let me observe, we are now coming to the mechanism of the Act, and in which we may see the wisdom and ingenuity of Parliament; and that, unless we view the measure as a piece of mechanism wisely constructed by Parliament to answer the two purposes intended, namely, the giving up the possession of the Land with a perpetuity of interest, for the benefit of the tenant, on the one hand; and the securing a valuable consideration for it, by creating a revenue for the benefit of the Duchy, on the other; we may be in danger of forming an erroneous opinion of this case, and therefore I would guard the reader from falling into the same error as others have done, by looking to the Leases as the end and design of the Acts, instead of looking to them as the means only by which that end and design is to be carried into execution, whilst I am endeavouring to shew what I think is the proper and true construction thereof.*

The good Estate (which in subsequent Acts is called a fixed and indefeasible Estate) thus intended to be given by 21*st James, is given by the enacting clause, which immediately follows the preamble, which, as I understand it, makes all*

Leases made, or to be made, perpetual Leases, *by making them good to the tenant against all future Kings and Dukes of Cornwall for ever; the words being, "against the King "and Dukes, their Heirs and Successors, and against all and "every other person or persons that should* at any time there- "after *inherit or succeed, according to the said limitation or "otherwise;" provided they are not made for more than thirty-one years, or three lives, or some term determinable on three lives; and this brings me to the consideration, that if a Lease, granted under the authority of the* 21*st James* 1*st., is good against all succeeding Dukes and Kings, it is consequently good against the present King; and if so, it must be a Lease in perpetuity. And the good Estate intended to be given the tenant is a vested interest in that Lease.*

That if the Leases are made not to exceed thirty-one years, or three lives, or some term determinable on three lives, they are within the provisions of the Statute, and consequently are Leases in perpetuity, and the tenant having a vested Estate under the Act, has a perpetual interest in the Lease, and consequently in the Land, from which the Duchy can never afterwards evict him. Now, the reason why this provision was introduced, as it seems to me, was, in order to effect the second object which the Parliament of 21*st James had in view, viz. the creating and securing to the Duchy a regular succession of revenue, to arise by means of Leases, and by fines to be taken on renewals of those Lease, making them the machinery by which the tenure was to be worked; the means by which the Duchy were to come at their fines, and the means by which the tenants were to enjoy that perpetuity of interest given them by creating the necessity of the tenant's application to the Duchy, from time to time, as he desired his Lease to be renewed, and which is, I think, all the tenant has to do on his part to secure that perpetuity of interest intended to be given him by the Act. The fines taken on granting Leases, and for renewals, is the consideration or revenue intended to be given*

the Duchy in exchange for such perpetuity of interest, as I have said before; and is that part of the measure concocted by Parliament for the benefit of the Duchy, and not with any view of restricting the interest of the tenant, who had it always in his power to keep up his perpetual interest in the Lease by renewals. And I do further contend, that the two leading objects of Parliament, above mentioned, could not be accomplished in any other manner; and that the wisdom of Parliament is fully exemplified in the vast improvement of the Duchy's revenue by those means, And, that I may not be thought to say so without good reason, let us for a moment consider what is said in the preamble of the 13th and 14th Charles 2nd.; it being there noticed to have been to the great advantage of the public; *and this proves that one of the objects of the Acts was attained—a great public good; and as a confirmation of my argument, that the Leases were only intended as the means to carry the end and design of the Act into execution, and by which the tenants were to have and enjoy that perpetuity of interest given; it is therein stated, that "a great part of the "Lands had been held by sundry Leases thereof, made for "years, and for one, two, and three lices,* by means of "which the tenants having fixed Estates, *have been encou-"raged to improve and manure the same, and had improved "the same, and thereon laid out great sums of money in "building and otherwise, to the great advantage of the "public." Which expressions, I think, are in perfect unison with my view of the Act in this respect, viz.:—That the Leases are only the means by which the tenants have and enjoy the good, fixed, and indefeasible Estates, or, in other words, the perpetuity of interest given them. That the tenure has since worked well up to the present time cannot be disputed; and particularly as relates to the Estate in question, for it has raised the Land from the original rental of £16. 10s. 9d. a year to £23,000 per annum; which never would have been the case, unless a perpetuity of interest had been given. Sup-*

posing, for a moment, the Leases had been for the full term of thirty-one years, or three lives certain, is it reasonable to conclude that such a vast improvement would have been effected on so short and precarious an interest? And is it consistent with reason to apply the words good—sure—fixed—and indefeasible—*(words of the largest signification and import the English language can produce, and which are only to be met with in freehold Conveyances), to terms so short and precarious as thirty-one years, or three lives. But none of the Acts say that Leases shall be made for thirty-one years, or three lives, but only, that they shall not be made* for more: *and this distinction is very material, and shews the tenant had the choice of taking a Lease for ten years only, or, one life only, and I would only ask, if such an interest as this could have been sufficient to have encouraged the tenant to an outlay of his capital, unless he had a perpetuity of interest in his Lease? and yet such a Lease as this would have been good against all succeeding Kings and Dukes, as coming under the provisions of the Constitution.*

In further support of this proposition, let us look how the case would stand if there was no such vested interest in perpetuity given to the tenant; and look at it as a term of thirty-one years, or three lives certain, (without the benefit of renewal,) as some will have it; and the following inconsistencies, I had almost said absurdities, will appear, and which, I think, can never be reconciled to common sense or reason.

It is quite clear that, in such a case, we should have had a thirty-one years' term, or three lives certain, in eighty-six acres of Land (the most valuable the Duchy had), at the low rent of £16. 10*s.* 9*d. a year; and the Duchy or the King would have been without revenue during that period; and if the Lease had been granted for three lives certain, without renewal, the probability would have been they might have been kept without revenue for fifty, sixty, or*

seventy years; and this is exemplified by one moment's reflection on the continuance of the lives of George Clayton, Medwin, and Sir William Clayton, who is still living. Now I will venture to leave it to the judgment of any man of common sense, whether this could possibly have been the intention of the Legislature, who must have had it in contemplation to have produced a regular succession of revenue to the Duchy. And I will leave it to that man to say, if a Lease of thirty-one years, or three lives, without a single covenant on the part of the tenant to improve the land, or to leave it in good condition; or to put one single brick or stone upon it, was a likely way to get the Duchy land built upon and improved at the tenant's expense. Or, if any Parliament, having such an object in view, could possibly have been guilty of so great a piece of folly? but I will still go further.

I think it cannot be denied that the principal end and design of the constitution thus established by 21*st James* 1*st. was to get the Duchy lands built upon and improved at the expense of the tenants. Now, if it had been only a lease for thirty-one years, or three lives certain, which was intended to have been given, and if the property in the land had still been considered to have remained in the Duchy, after the tenant had so taken his lease under the tenure, would not Parliament have provided that proper covenants should have been introduced into their Leases for protection of the Land, and to have* compelled *the tenants to have built upon and improved the same? There is no such provision in the Acts; no such covenants in the Leases; in fact, there are no covenants in the Leases for protection of the Land, and none but what are necessary for the security or protection of their revenue; and his shews that the property in the surface of the Land vested in the tenant immediately, and the interest of each party became divided and defined at the instant of the tenant's taking his first Lease, and the revenue only, from that moment,*

became the property of the Duchy, and the fines payable, following the improvements made, from time to time, as a shadow follows the substance.

Thus, then, I think, I have made it appear that, so far as respects the surface of the land, the same is the property of Sir William Clayton, and not of the Duchy, who have only a limited interest in the same; but I will go further still to make it the more clear.

It will be observed that all the Acts give encouragement to the tenants to come in and renew, not only their Leases, but their Estates: *and on looking into the* 1st *Charles* 1st., *I see the first contracts made under the tenure, are not only for Leases, but for Estates; this shews that the tenants must have had something more than a mere Lease; and what could this have been, but a vested interest in the Lease, so made good against all succeeding Kings and Dukes, being that good Estate the* 21st *James proposed to give? And what could this vested interest, or this good Estate, have been, but a tenant-right of renewal?*

Again: in further support of the proposition, that the Estate in question is the property of ir William Clayton, and not of the Duchy, nearly all the Acts treat the property, with the houses built thereon, as the property of the tenants held under the Duchy, *mostly in these words:* "*That the said* "*tenants may be encouraged to renew* their Leases and Estates, "*and thereby be better enabled to repair* their houses, *and* "*provide for their families, and to improve* their Lands "holden of the said Duchy. *Be it enacted, &c.*" *Now, all the enacting clauses in every Act make all Leases granted, or to be granted, good to the tenants against all succeeding Dukes and Kings which should at* any time thereafter *inherit the said Dukedom, provided they are not made for more than thirty-one years, or three lives. I contend, therefore, that as long as they are made within its provisions, they are good Leases in perpetuity, and the tenant has always an innate power of*

keeping that perpetuity of interest in himself; and this power is shewn to have always been acted upon by what is said in the preamble of all or most of the Statutes, where it is said, "Which Leases are desired to be renewed by many of the "said tenants." This I cannot consider otherwise than as a legal exercise of an acknowledged right, which the Acts of Parliament themselves recognize.

Again: in the Act of 5*th and* 6*th William and Mary,* 1692, *a new clause is introduced for the protection of the tenants against the excessive demands of the Duchy officers for fees, on granting the renewed Leases, inasmuch as they were used to charge half as much for their fees as for the fines, where it is said that such charges discouraged the tenants from renewing* "so often as otherwise they would do." *Now, I submit that this also proves the tenant had an innate right of renewal in himself at any time he thought proper, and was not compelled to come in at stated periods, and therefore drove the renewal off to the latest period, on account of the great charges for fees, choosing rather to pay what fines might have become due to the Duchy in the mean time at once, and by that means escape from the enormous fees charged by the officers of the Duchy, by having one renewed Lease only to pay for instead of three, though, if they had been charged moderate fees, they would in all probability have renewed on the dropping in of a life, or at proper periods during the thirty-one years.*

Again: it will be seen by 21*st James* 1*st. and* 1*st Charles* 1*st. that the ancient rent only is directed to be reserved, and this alone shews that renewals were contemplated. Now, on the restoration of Charles* 2*nd.,* 1660, *when every oppressive measure was used to raise him money, this ancient rent was increased; and in the following Act,* 22*nd Charles* 2*nd., after reciting the grievance, it is said,—"Whereof the tenants "complained"—and the King and Parliament redressed their grievance by allowing the tenants to compound with the Duchy, and have the increased rents restored back to the*

ancient rent. Now, those tenants who had taken their Leases before 1660, *at the ancient rent, were allowed the sum they had paid for such composition out of the next fines, as was our case. The tenants who had taken at the increased rent in* 1660 *and since that period, were not of course allowed it, because it was part of their contract to pay such increased rent; but it being considered as a violation of the original tenure or constitution of the Duchy, and making their Leases in some degree voidable; they were allowed that liberty, in order to reduce their title under the original provision of* 21*st James* 1*st. and to make it more secure and marketable, and enable them the better to raise money thereon, or to assign their interest to purchasers, for valuable consideration: on this account, the Statute of* 12*th and* 13*th William* 3*rd.*, 1700, *confirms all Leases and Grants made in the time of Charles* 2*nd., and carries it back during the Commonwealth upwards of fifty years, in order to comprise any Lease which might have been made in his absence from the kingdom in the time of Cromwell. Now, I say these are strong circumstances to shew, that the Leases were renewable Leases, or how could they be confirmed and made good after so many years had elapsed, and after they must have expired, if they had been only for thirty-one years certain; it also shews that the tenants must have been considered as having a vested interest in the Lands in perpetuity, and which gave them a right to complain, and this is acknowledged by redressing their grievance, particularly so, when it is considered that the ancient rent after redemption is made a* rent charge *upon the individual estate, by which the Duchy is* for ever barred *from raising it again. This circumstance also shews the property to be the property of the tenants and not of the Duchy; for the Duchy having been prevented by the Act of Parliament, from ever raising this ancient rent again, shews that the tenants had an indefeasible interest in the Land in perpetuity. There is another point in these Acts worthy of consideration, which is, that in*

the first Act passed for redress of this violation of the tenure, there is the word "tenure" introduced into the saving clause, which was not there before; and this shews how careful Parliament was to protect the title of the tenant from any further innovation of his rights and interests, and especially from any future violation of the tenure so established by the constitution of the Duchy; it also shews the interest Parliament took in affording every protection, and in giving every security, that could possibly be given to the tenant's title, well knowing that the more secure the tenant was made in his title, the greater would be the encouragement afforded him to build upon and improve his Land, and the greater would be their revenue arising therefrom.

Again: if the Act of 33*rd George* 3*rd. says a ninety-nine years' term absolute is necessary to give encouragement to the tenants to improve the waste lands only, surely it must be necessary to give a perpetual Estate to improve the waste Lands, and also to build farm-houses and other buildings thereon. I am at a loss to understand how it can be argued, that if it be necessary to give a ninety-nine years' term absolute to induce the tenant to do one act of improvement, how it can be said that a thirty-one years' certain (without the benefit of renewal) is sufficient for both purposes of improving and building houses, &c.; the latter being perhaps ten times more expensive to the tenant than the former. It would be such a contradiction in the Acts which could not be reconciled, and the inconsistency goes very largely in support of my views of the case.*

*Again: the outlay of capital in erecting farm-houses, barns, stables, and other necessary buildings, fit for the occupation of the Land, is at least six times the then value of the fee-simple of the property; and then it is to be considered, there is not only the rent of £*16. 10*s.* 9*d. a year, (*3*s.* 10*d. per acre), but a fine to be paid on renewal; which is equal to one year's improved rent in five; (three fines at not exceeding*

two years' net rent, having been always paid during thirty-one years); so that the transaction between the tenant and the Duchy is more like a sale and purchase for a valuable consideration than otherwise; but as Parliament could not sell the inheritance, and the mines and royalties were likely to be of great value, they alone were reserved. The observations on this part of the case seem to warrant the conclusion I have drawn, that the provision clause in the Acts is for the protection of the revenue of the Duchy, and not to restrict or abridge the vested interest of the tenant, which, I say, is a perpetuity of interest made good to him against all future Kings and Dukes, as long as the provisions of the constitution are complied with.

Then, as to the words in the enacting clauses which make the Leases perpetual, according to their purport and intent. Those words, according to Cowell, signify design and intent. Now, their design and intent was, that they should be renewable Leases; otherwise, it is clear, the Duchy would have been without revenue—renewals being the only means by which they are to come at that revenue; and it will be observed, that the Leases *are not made good according to the* words and contents, *but only the* covenants—*this is a remarkable distinction.*

Then as to the clauses in the Acts, which say that all covenants, &c. shall be good, according to their words and contents, *as well against them to whom the reversion of the Lands shall come, as for and against them to whom the* interests of the said Leases *shall come respectively: this shews the tenants have an interest in the Leases, and shews how the Leases are to be esteemed good, not according to the words thereof, but according to their design and intention.*

The King or Duke not having parted with the inheritance, have a contingent reversion, depending on the tenant's neglect or forfeiture; and the above words carry perpetuity in view, as well on behalf of the King or Duke, as in behalf of any

representative or assignee of the tenant, and are in unison with the enacting clauses in all the Acts, and seems to confirm the perpetuity of interest given by the enacting clause, and shews the tenants took a vested interest in such perpetual Lease.

As regards the saving clause in all the Acts, which say, "Saving always to all and every person and persons, bodies "politic and corporate, their heirs and successors, executors, "administrators, and assigns, (other than the King or Duke) "and their heirs, and all and every person and persons that "shall hereafter have, inherit, or enjoy, the said Dukedom of "Cornwall, by force of any Act or limitation whatsoever, all "such rights, titles, estates, customs, interests, tenures, "claims, and demands whatsoever, of and in the said Lands, "to all intents and purposes."—Here are the same words carrying perpetuity with them, as in the enacting clause, and the interests of all persons being saved (except the King and Duke), seems to shew Parliament had given all property in the Land to the tenants by shutting the King and Duke out of the benefit of this saving clause.

Then, as to the declaration in the provision clause in the Act, that all Leases and Grants, otherwise made or to be made contrary to the constitution so established, shall be null and void. *This, as I have said, is the barrier or chain that binds the constitution together, and is for the protection of the revenue of the Duchy, because this provision was a necessary part of the mechanism of the Act, invented to afford them the means of coming at their fines on renewal, and thereby to keep up a regular succession of revenue to the Duchy, and not to limit the vested interest of the tenant in the Lease, which is made perpetual by the Act, because made within its provisions which give it perpetuity, but it is the chain which the Duchy officers want to break, and to destroy the consttitution altogether, in order to enable them to seize upon this property: but they cannot destroy it, for it is good against all succeeding*

Kings and Dukes, and will last as long as the Dukedom stands, the tenants having an indefeasible interest in the same.

Then, as regards those parts of the Acts which give encouragement to Copyholders to come in under this tenure or constitution, and making Grants of Copyholds by Copy of Court Roll, according to the custom of the Manors of the Duchy; they likewise are subject to the same provisions as the leasehold tenants. Now, as the Estate in question is described in our antient Letters Patent of James 2nd., to be "Parcel or reputed parcel of Land belonging to the Lord of "our said Manor of Kennington," it should seem that they were formerly Copyhold; and if so, they of course would be subject to no more fines than which, according to the custom of the Manor, are payable; i. e. not exceeding two years' rent, receivable by the tenants, even for Copyholds of inheritance, on death or alienation, which are payable at about the same periods as fines become due for the Estate in question. I observe in these Letters Patent, all erections, walls, mounds, &c. are to be kept and left in repair at the end of the term granted; but I say those covenants are not inconsistent, but altogether consistent, with the interests of the Duchy, as regards their revenue, which is in proportion as one in five to ours, and therefore they had a right to introduce those covenants for their protection: but here it must not be forgotten, and which is very material to be considered, there are no covenants on the part of the tenant to build upon or improve the Land, or to leave it in a good state of cultivation; or any other covenant introduced for the protection of the Land, which most certainly would have been the case had the property in the Land have remained in the Duchy. And this circumstance likewise shews the property in the land was out of the Duchy, and in the tenants; and that, therefore, it was not necessary for the tenant to covenant with *the Duchy to build upon or improve his own*

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Land, which sufficiently accounts for the absence of any such covenants: all buildings, walls, &c. put upon the Lands by the tenants, it was proper, for the protection of their revenue, that they should be kept up. This also shews how each party's distinct interests were defined, and, that the tenant had a vested interest in the Land.

Again: it should be considered, that, at the time of 21st James, it was not certain whether, from experience, it would answer the purpose of the tenant to hold on the Land. I consider that all the tenants were at liberty to throw up their Leases, and not to renew, though they had a vested interest given them in the Land, in order to encourage *them to build upon and improve the same. Yet, if they found they got upon a bad soil, or if any other impediment was in the way of improving the Land to their own advantage, they were not obliged to embark their capital in a speculation which would bring utter ruin on their families.*

In our case, witnesses, who are now living, remember the property in question flooded with water three or four months in the year; and that it was with great difficulty and expense, and not till roads were made in and through the property, that the water could be drawn off into the Thames, so as to render the means of getting it very much improved for garden ground: the first step in the improvement of this property was, the inclosing forty acres in the middle of the eighty-six with a garden wall, with a view to convert the Land into garden ground. In none of the Letters Patent are there any covenants to compel the tenants to build upon or improve the Lands; the improvements and buildings were left to the tenant's discretion, who, of course, would improve the Land as soon as he saw it was his interest so to do. There is in one of the old Letters Patent a covenant that the tenant should not erect any new buildings, but under the direction of the Duchy's Surveyor. This was for the protection of their revenue; and, in order to see if the buildings the tenant put

on the Estate were good and substantial, and likely to last to benefit their revenue, and to point out the situation thereof; but even this has been many years abandoned. There is also a covenant that the tenant should plant so many oak, elm, and beech, and a reservation of timber; this also is consistent with the protection of their revenue—the right of soil and growth of timber being part of the manorial rights not allowed to be leased.

The tenants of this Estate were used to dig and dispose of Gravel for making gravel walks on the Estate one to another, and perhaps some was used on the roads adjoining to or passing through the Estate, but all which was in the way of improving the property, and no fault found till the Duchy had determined to get the property into their own hands.

From these observations it will be seen, that the tenant was at liberty to do as he liked with the Land, independent of the Duchy, and without their controul, and that the covenants above-mentioned, are in no wise inconsistent with the interest of the tenant, but are consistent with the protection of the revenue of the Duchy.

I see, also, that in our other ancient Letters Patent of William 3rd., the Estate in question is, in like manner, described as part and parcel of the Land belonging to the Lord of the Manor of Kennington; the covenants and reservations are the same as in the last Letters Patent, on which no further observations arise than those I have before made. These are all the Letters Patent I have been able to find; in neither of which is there any reservation on the part of the Duchy for liberty to enter upon the premises to inspect any buildings going on, or improvements being made; nor is there any restrictive covenant to prevent the tenant from letting, setting, or assigning the property to others. There are no covenants in either, excepting what may be considered absolutely necessary for the protection of the revenue, and none whatever for protection of the Land, which the tenants might at any

time have suffered to have become barren and waste again; and this, in all probability, would have been the case on a thirty-one years' lease certain, provided the tenant had had no longer interest in it.

Then, as to the present Letters Patent of 1777, *(a copy of which is given with the Acts of Parliament, granted to Sambroke Freeman, the trustee of the settlement, on the marriage of Sir William Clayton's father), for ninety-nine years, determinable on three lives.*

The property is described as part of the Demesne Lands of the Manor of Kennington, and parcel of the possessions of the Duchy of Cornwall aforesaid. In these Letters Patent there are no reservations or covenants, save what are necessary for the protection of the revenue of the Duchy—such as payment of rent and taxes—to repair, as well the messuages demised, as all other messuages, erections, and buildings, which should during the term be erected or built, and to leave the same in repair at the end of the term: there is no covenant whatever to compel the tenant to build a single house or make any improvement whatever. Nor is there any reservation for liberty to enter on the premises, nor any restriction against the tenant assigning, or otherwise disposing of the property, but, on the contrary, requires all assignments thereof to be enrolled in the Duchy office. There is not even a covenant, as in former Letters Patent, binding the tenant to plant trees, or to keep mounds in repair. All is left to the free will of the tenant to do as he likes, and if he had thought proper not to have built a single house, or made any improvements whatever, no person could have compelled him to have done so. This shews the property in the Land was, at this time, considered in Sir William Clayton's father. In the present Letters Patent the ancient rent is reserved, and in all other respects they are made in strict conformity with the rules and provisions of the Act of 21*st James* 1*st., continued down to* 16*th George* 3*rd., under which latter Act they were granted.*

They shew that, at that period, 1777, *the property was considered the property of the tenant, and not of the Duchy, otherwise covenants would have been introduced into them, compelling the tenant to erect a certain number of houses of certain dimensions, and to have laid out a specific sum of money in so doing; but the absence of any such covenant shews the Duchy did not consider the property to be theirs. If it had been so, covenants would in course have been introduced the same as in other Leases, granted for building purposes, from other large proprietors: so far from this being the case, I think I have shewn my last proposition to be correct; viz. that the Duchy, instead of having any power over the Land, would be liable to an action of trespass, and have no power even to order their surveyor, or other person, to put a foot upon the property without permission of Sir William Clayton.*

Having thus established, from the Acts of Parliament and Letters Patent, as I humbly conceive, the several propositions laid down by me: viz. That the Estate, so far as respects the surface of the Land, which is all we contend for, is the Estate of Sir William Clayton, and not of the Duchy, any more than a Copyhold in fee can be considered the Estate of the Lord;— that the Duchy have no further interest therein than their ancient rent and revenue by fines, their royalties, and growth of timber, and a right to introduce covenants in the Leases for the protection of their revenue;—that the tenants have a vested interest in perpetuity, by means of renewable Leases;— that renewals necessarily spring out of the provisions of the Statute of James, continued by the subsequent Acts, otherwise the Duchy could never come at their revenue;—that the Duchy have never exercised, or had any right to exercise, any dominion over the surface of the property from the time of the first Lease being taken under the tenure, excepting what was necessary for protection of their revenue, and manorial rights, and are, at this moment, subject to an action

of trespass, rather than having any right to seize upon the Estate in the manner they have done. I shall now proceed to give such evidence, in further support of these propositions, as arises from the acts of the parties, and other collateral circumstances, and which, although they may not be admitted in a Court of Law, or Equity, may be useful to Parliament, the proper tribunal, before which it has been always my opinion this case should ultimately be brought.

In the first place, then, Morris and Clayton, (Sir William's ancestor) who purchased the Estate in the time of Charles 2nd, were assessed to, and paid the royal aid tax, as the proprietors of the Land: this tax was granted to King Charles on his restoration, and, I believe, was paid quarterly; the land-tax has been ever since borne by the Claytons, and reimbursed by them to their sub-lessees, who have since redeemed it.

All the sub-leases, from the year 1700, *granted by Morris and Clayton, and, after Morris' death, by Clayton alone, have a covenant, that, in case the Landlord should be minded to renew his Lease with the Duchy, then the tenant should surrender his Lease, to enable him so to do, and to take a fresh Lease, and those covenants are also in all the latter Leases, down to* 1777.

The regular succession of renewals by the Clayton family from the period of 1670, *when they first became the proprietors of the Estate, up to the present time, and that at a fine calculated at not exceeding two years' net rent, receivable by them, the same manner as Copyhold fines were calculated, and never on the rack rent value of the property.*

*The substituting the ninety-nine years determinable on three lives, in lieu of a thirty-one years' term, by the Duchy, for the purpose of enabling the tenant to grant Building Leases of sixty-five years, and taking £*468. *only as the first fine on granting the new Letters Patent for putting in three lives, calculated on one and a half year's rental, shews that the Duchy*

expected successive fines to accrue on renewals as the lives dropped, in accordance with the original tenure of 21*st James* 1*st, which had been acted upon for a hundred and fifty years before, and that this usual mode of calculation was to form the criterion or basis on which all future fines were to be estimated.*

The surveyor of the Duchy, Sir Robert Taylor, being also employed by Sir William Clayton's father, who considered there was a right of renewal by his granting terms of ninety-seven years absolute of several parts of the property for building purposes.

The Mortgage being made to the said Sir Robert Taylor of the right and benefit of renewal, *as part of the Estate mortgaged, and that Mortgage being enrolled in the Duchy office, and the right of renewal being thus recognized by them.*

The conveyance of the legal Estate having also the right and benefit of renewal, *as part of the property conveyed from the trustee of the settlement, to Sir William Clayton, in order to enable him to grant the Building Leases, which is, in like manner, enrolled with and recognized by the Duchy.*

The private Act of Parliament obtained by Sir Robert Taylor, as the agent of Sir William Clayton, to enable the trustee of the settlement, and tenant for life, to grant Building Leases, which he could not otherwise have granted under the terms of the settlement; and that Act of Parliament providing that the fines on renewals should be paid out of the rents and profits of the Estate, and reciting the consent of the Lords of the Treasury to the application for a ninety-nine years' term, determinable on three lives, for the purpose of enabling Sir William Clayton's father to grant Building Leases, and which were granted accordingly.

The Letters Patent being granted to Sambroke Freeman, the trustee, to the uses of the settlement, and such uses being indefinite.

The Duchy being fully cognizant of the building transaction in 1777.

The Copy of the Judges, ('Willes and Nares') Report on the Clayton Building Act, and of their approval of it, subject to such fines, covenants, and conditions for renewal as were usual on like occasions.

What is said in Gilbert's History of Cornwall relating to this tenure, is also worthy of notice, as shewing how the constitution of the Duchy, as established by 21*st James, was understood in that county, where it says, "Many hundred families "are concerned in these Estates and tenures; some by settle- "ments, others by purchases, for valuable considerations, &c. "and being equivalent to Copyholds in fee, they generally "fetch a price when sold, almost equal to that of fee simple." This completely confirms my idea of the tenure, and, I trust, it will ultimately be found correct.*

Thus having shewn that not only every expression in the Acts themselves, but every collateral circumstance arising from the Acts of the Parties, and otherwise, are all in unison with, and in favor of the construction I have put upon those Acts, I shall only make a few more observations in support of that construction.

I know the law abhors perpetuity of interest, and that there are many cases to be found in Vesey, as well as in other Reports, decidedly against favoring perpetual Leases; but then it must be borne in mind, that all those cases have been decided upon the principle that such perpetual Leases, or, in other words, Leases renewable for ever, work an injury to those persons who may hereafter become entitled to the inheritance. Now, I contend, that this case of Sir William Clayton's is different from all those cases, and is without a precedent, and stands by itself, inasmuch as here is a perpetuity of interest created and established by a positive Act of Parliament for a particular purpose, and that not for the

injury, but for the express benefit of those who may succeed to the inheritance, namely, for the purpose of getting the Lands built upon and improved at the tenant's expense; and in order to prevent any application of such principle to the present case, the Statute of 21*st James* 1*st., which gives perpetuity of interests to the tenant, has taken care to establish and ordain that all Leases made, or to be made, shall be good to the tenants, against all future Kings and Dukes, their Heirs and Successors, and against all other persons who should, at any time thereafter, come to the inheritance of the said Duchy; and this by a positive enactment; thus giving the perpetual Estate as recommended by Mr. Glanville, in his speech to the Commons: therefore, it appears to me, that none of the reported cases can, by any possible means, be made applicable, or brought to bear against the present case: and, if I am right in what I say, as respects the perpetuity of interest thus created for the benefit of the tenants (and I believe I am), then all those cases which have been so much relied upon by the Duchy, and others, as well as every argument founded upon them, must fall to the ground, and can have no effect whatever against the present case.*

It may be asked, how the tenant right of renewal springs out of the constitution thus established? I answer: it of necessity is made to spring out of it, for the proviso in the Acts is the very means which the Legislature has ordained for the purpose of creating and preserving a regular succession of revenue to the Duchy, which could be done in no other way; the Leases of thirty-one years, and three lives, (with the renewals thereof) being the only possible manner by which such revenue could be secured; and is that part of the measure devised by Parliament, more for the benefit of the Duchy than for the tenants; and without this provision th Duchy must have been without revenue, which never could be the intention of the Acts. The provision clause produces the

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necessity of an application to the Duchy for renewals, making it the duty as well as the interest of the Duchy to grant such renewals, and, I think, all the tenant has to do on his part is, to desire his renewal in the accustomed way recognized by the Acts. And, it seems to me, that if the Duchy refuse to grant renewals on the customary terms, the tenant may then rest upon his vested interest in the Lease, which stands good for ever, as long as the provisions of the Act are complied with, and which is the very thing which gives the tenant that perpetuity of interest; the tenant having done all that the Acts require him to do, keeps the right of renewal in him, which the Duchy cannot destroy, the Lease being only the machinery by which the Duchy were to supply that perpetuity of interest to the tenant which the constitution has given him, for the express purpose of gettting the Lands built upon and improved; such interest being always to be had and enjoyed by means of renewable Leases. In this manner the constitution is made to work, and is the only way the Parliament of James could have effected the two purposes intended, viz., of giving to the tenant a permanency of interest in the Lands, and, at the same time, create and preserve a regular succession of revenue to the Duchy, in exchange for such permanency of interest, and which it was necessary to be accomplished by one and the same Act.

The Duchy, as it seems to me, are placed in a similar situation, as a Lord of a Manor is to a Copyholder of inheritance, where, when the tenant prays for admission, and the Lord refuse it, the Courts will compel him. In like manner, the Parliament (by whom the constitution was originally established), I think, have power to compel the Duchy to renew on the accustomed fines. If they refuse, we have only to put in our claim: our right of renewal is not impaired—it still exists—and will be title sufficient to hold the legal possession of the property. To Parliament Sir William

Clayton has a right to look for protection, not only of himself, and his sub-lessees, but of the constitution by them established, and in which so many of his Majesty's subjects are become so vitally and extensively interested: former Parliaments have given protection to the tenants; and I doubt not but the present Parliament will do their duty likewise, not only towards Sir William Clayton, and the many hundreds of families who are interested in this property in so many different ways, but will do their duty towards the constitution of the Duchy likewise, and guard it from further violation; and, I trust, that they will look in future with a jealous eye at the conduct of those persons who introduce Bills into Parliament to alter the constitution of the Duchy, without giving the slightest notice to the tenants, who are so vitally interested in it; and I would respectfully call their particular attention to the three last Acts which have been surreptitiously procured to be passed, in order to break up the constitution of the Duchy altogether, and to enable them to seize upon the property of the tenants, and more especially to the clause in the 1st and 2nd William 4th., which enables them to be Judges in their own cause in assessing their own fines, and by authority of which they have levied a fine of £72,000, instead of an accustomed fine of about £1,800; and, because it is entirely out of Sir William Clayton's power to pay such an exorbitant fine, they seize on his Estate, by granting reversionary Leases to others, receiving fines of them, thereby seeking to destroy that very constitution which has been the means of getting the present Estate covered with building, and which has so much enriched them; and with it to destroy, not only hundreds, but many thousands of families; for the injury and injustice will not only extend to Sir William Clayton and his lessees, and those interested under them, but to every other person holding Lands under the Duchy in the kingdom, as I see by this last Act they have also not only usurped the power of prescribing

their own terms, but have actually shut out their own lessees, including Sir William Clayton, from the benefit of the saving clause, shewing their full determination to evict him of the Estate by force, if possible; and by force of a law, surreptitiously obtained, not only to eject him, but every other person who hold Lands under them—after their having laid out all their capital in building upon and improving the Lands, and being the occasion of such a vast and immense revenue they now enjoy from fines, the produce of the tenant's capital and industry.

From the evidence arising as it were from the acts of the parties themselves, it appears that, down to the year 1777, *inclusive, when the last Letters Patent were granted, the notion of a tenant-right of renewal prevailed, even in the minds of the officers of the Duchy themselves, particularly of their own surveyor, as well as every other party connected with that transaction, and even in the minds of the Judges, who made the Report on the private Building Act.*

Now, considering the tenure under which the Duchy itself was holden prior to the 21*st James, the necessity that existed for the interference of Parliament to devise some plan to get the Lands built upon and improved. The speech of Mr. Glanville, as to the necessity of giving a perpetual Estate for that purpose; the proposal of the Parliament of* 21*st James to give to the tenants such a good Estate as would be sufficient to encourage them to an outlay of their capital in building and improving, and immediately thereupon ordaining, establishing, and enacting, that all Leases granted, or to be granted, should be good in perpetuity to the tenant, against all succeeding Kings and Dukes of Cornwall for ever (as I understand it), provided they were not made for more than thirty-one years, or three lives. And, considering that so long as Leases are not made for more than thirty-one years, or three lives, or some term determinable on three lives, the provisions*

of the Act are complied with; and so long the tenant is entitled to his perpetuity of interest in the Lease, so established to be a Lease in perpetuity: and, that those provisions have been strictly complied with in the present case; and, that the Leases of thirty-one years, or three lives, are not the end and design of the constitution, (the error which, in my humble judgment, others have fallen into) but only the means by which that end and design is to be carried into execution: and, considering that that end and design was to give a perpetuity of interest to the tenants, in order to get the Duchy Lands built upon and improved by them, and to create a revenue to the Duchy, as their future and distinct interest; and, connecting all the corroborating circumstances of the case, with the evidence arising from the Acts of Parliament themselves; and, considering that all the Acts, from the 21*st James* 1*st. down to* 16*th George* 3*rd., under which our Letters Patent were granted, are to be taken together as one and the same Act, and as being a continuation of the original constitution or tenure first established by* 21*st James* 1*st., by a regular chain of connexion, and that the* 21*st James was passed for establishing an entirely new constitution of laws and ordinance for the government of the Duchy Lands, under the provisions of which the tenants were for ever afterwards to hold and enjoy their Lands, together with all houses and buildings they should erect thereon at their own expence, under the Duchy; and that it was the express end and design of the Legislature to give to the tenants a vested interest for the purpose of encouraging them at their own expense to build farm-houses, barns, stables, and other buildings, necessary for the occupation and improvement of the Lands; and considering also that nothing less than a perpetuity of interest could be sufficient for such purposes;—that that perpetuity of interest is expressly given to the tenant by all the Acts, by making all Leases to be granted, good against all succeeding Dukes and*

Kings, who might at any time thereafter inherit the Duchy; and considering that the present King, as having succeeded to the inheritance, is bound by the the enacting clauses, and that a Lease granted under the provisions of the Act, is good against him, and the successors to the Dukedom,. in perpetuity; that the Estate proposed to be given by 21*st James* 1*st., is a vested interest in such Lease; and also considering the provision in the Acts, that the Leases shall not exceed thirty-one years, or three lives, or some term determinable on three lives, is a provision for the purpose of producing the necessity of the tenant's application for a renewal, and that the proviso has made it to the interest of the Duchy, as well as making it their duty, to grant it; and that it was by these means only the Duchy could come at the revenue intended to be secured to them by Parliament; and that this was that part of the measure concocted by Parliament for their benefit. That the Leases were intended to be the means only by which the tenants were to have and enjoy that perpetuity of interest given them by the enacting clause in the Statutes, and that the Leases are only to be considered the machinery by which the constitution was made to work for the benefit and advantage of both parties; and, considering also that it is acknowledged by the* 33*rd George* 3*rd. that a ninety-nine years' term absolute is necessary for the purpose of encouraging the tenants to improve the waste Lands only, without buildings, that, from logical reasoning, no less than a perpetuity of interest could have been sufficient for the two purposes of building and improving; considering the tenants were necessarily obliged to expend a sum far beyond the value of the fee-simple of the property in building alone, exclusively of the great expense of bringing the Land into a state of cultivation: and that the revenue of the Duchy was intended, and has been on a continual increase, according, and in proportion, to the tenants' improvements, and which*

also carries perpetuity in view; and considering that such perpetuity of interest is clearly given by the enacting clause in every Act; and that this part of the Act is that part of the measure intended for the benefit of the tenant, whilst the provision clause is the other part of the measure intended for the benefit of the Duchy; and that, considering the very great outlay of capital the building upon and improving waste Lands would occasion to the tenant, it was afterwards absolutely necessary to make the Leases perpetual, in order to indemnify the tenant for such outlay; and also necessary, in order to secure a revenue to the Duchy, to provide the Leases should not exceed thirty-one years, or three lives, for the purpose of creating the necessity of renewals, so that the Duchy might come at their fines, and thereby get a regular succession of revenue; considering also, that Sir William Clayton derives his title from the Acts, and not from the Letters Patent; and that the last Letters Patent being granted in strict conformity to the constitution, which allows of Leases granted for any number of years, (and of course for ninety-nine years) determinable on three lives, are strictly within the provisions of 21st James 1st. and 16th George 3rd.; and that consequently our present Letters Patent are thereby made a good Lease in perpetuity under those Acts, and under which we claim title; and that the Letters Patent themselves are the means appointed by the terms of the constitution, by which Sir William Clayton holds and enjoys that perpetuity of interest, originally intended to be given to the tenants as a compensation for their outlay: and, considering also, that the Lands were formerly part of the Lands belonging to the Manor of Kennington, and so expressed to be in the old Letters Patent, and that the Acts recognize the Lands to be the property of the tenants, held under the Duchy; the constant exercise of this right of renewal by the tenants; the recognition in all the Acts that the tenants had Estates, as

well as Leases to renew; that the Leases are by the Act of 13*th and* 14*th Charles* 2*nd., expressed to be the means by which the tenants had and enjoyed their Estates; the words good, fixed, and indefeasible Estates being chosen by the Legislature to convey the perpetuity of interest, (words of such large signification as only to be met with in freehold conveyances, and not applicable to terms so short and precarious as thirty-one years or three lives). The admission by the Legislature that those short terms are not sufficient for such purposes, by the* 33*rd George* 3*rd.; and most particularly taking into my consideration the preamble of* 21*st James, proposing to give to all persons who should take Leases, such a* good Estate *in the Lands as would be sufficient to encourage them to build and maintain their houses, and good manuring of the Lands to be demised to them, and immediately thereupon ordaining, establishing, and enacting that all Leases granted, and to be granted, should be Leases in perpetuity, good against all persons who should thereafter inherit the Duchy, under any Act of Parliament, or other limitation whatsoever, carrying the perpetual Estate meant to be given the tenant, even against all persons inheriting the Duchy, by force of any Act, altering the tenure of the Duchy itself, which I consider was to prevent the perpetuity of interest intended to be given the tenant from being defeated: and that this perpetuity of interest thus made good against the Landlord, must be good in favor of the tenant, as a Lease or vested interest in perpetuity, provided it did not exceeed thirty-one years, or three lives; and that as long as those provisions are complied with, so long has the tenant a perpetuity of interest in the Estate, to be had and enjoyed by renewable Leases; which are the means appointed by the* 21*st James to secure the intended revenue to the Duchy, which could be effected in no other way. And, considering that the Duchy have never exercised one single act of ownership over the*

Lands for the last hundred and seventy years, more than was necessary to protect their revenue; and which I do not consider an act of ownership over the Land, which is the sole property of the tenant as much as a Copyholder's in fee is his; there being no covenants in any of the Leases for protection of the Land from becoming dilapidated, and which shews they considered themselves as having no immediate material interest in it. And taking all other points of the case, which I have before shewn, into mature consideration, I am firmly of opinion, that the property in question is the lawful property of Sir William Clayton, held under the Duchy, as fully and in the same manner as Copyholds in fee are held under them, as Lord of the Manor of Kennington, and of which I believe this property originally to have been a part; and I am firmly persuaded that Sir William Clayton has such a vested interest in the same, which the Duchy can by no means deprive him of, and that he is entitled to his renewal on the same reasonable terms as his ancestors have usually had such renewals granted them, and which I feel confident is in full accordance with the original constitution, as established by 21st James, viz. on a fine calculated at not exceeding two years' rent on £1,236, (that being the improved value to the tenant) until his rental increases by the falling in of the sub-leases granted by him; and until that event happens, the Duchy are premature in their demand of a fine calculated on a rack-rent value of the property, before Sir William Clayton shall have come into possession thereof. And, before I quit this subject, I must be permitted to express my sincere desire, that this reformed Parliament will consider if, in passing the three last Acts, the Parliaments before have not been grossly imposed upon, and have been inconsiderately made to legislate on the property of private individuals (the tenants of the Duchy, and all others who are in any way concerned or interested in the property) without

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giving them the slightest notice; and that they will consider, if the constitution of the Duchy has not been lost sight of by those Parliaments, from lapse of time, and not having been brought before their view and explained in the manner it ought to have been. And I respectfully submit, that the only way to redress the grievance is for the present Parliament to take the three last Acts into their mature consideration, and compare them with the original constitution as established by 21st James, continued down to 16th George 3rd., inviolate; and repeal all the three subsequent Acts, which I consider to have been surreptitiously obtained, and passed in direct violation thereof, and thereby to restore the constitution to its original purity, and, consequently, the tenants and others to their respective rights and interests therein. For I consider that the Parliament might as well, and with as much propriety, destroy the constitution of the country, and permit the King to seize every nobleman's Estate in the kingdom into his own hands, as to permit the officers of the Duchy to get Acts of Parliament passed to destroy the constitution of the Duchy, and to seize on the property of its tenants and others who, under its protection, have been induced to outlay their capital and industry thereon, by building upon and improving the same, and bringing it to the value it now is, (all at their own expense, and without one single farthing outlay to the Duchy); and that this is a grievance which calls loudly for the interference of Parliament, to remedy, in order to prevent the utter ruin of many hundreds, perhaps thousands, of families; for I consider the evil and oppression will not end here, but will affect the interest of every person holding Lands under the Duchy.

SINCE writing the foregoing I have been favoured with a perusal of the Attorney-General's Answer to the Bill in Chancery, filed by Sir William Clayton. I see, as a matter of course, the Duchy deny any tenant-right of renewal, and say the renewals were all a matter of grace and favor, and deny any rule of calculating the fine, and say they have a right to assess a fine at their own pleasure, after repeatedly giving the tenants every encouragement, by Acts of Parliament passed from time to time, to induce them to lay out their money in building upon, and improving the property; and after this Estate has been regularly renewed, and a fine assessed at one and a half year's rent, for these last one hundred and seventy years.

They also deny the £16. 10s. 9d. to be an ancient rent, although it is over and over again expressed so to be in their own deeds. They likewise rely on that part of the Clayton Private Building Act, which directs that Covenants should be inserted to compel the Builders to pay their proportion of the fine on renewals, and say Sir William ought to have continued the same covenant in the Leases he granted. Now I contend that this covenant was introduced for the protection of the parties interested under the settlement, and as a private family arrangement, and of which the Duchy have nothing to do, and cannot be entitled to avail themselves of it in any way, and that Sir William was not obliged to introduce any such Covenant, the powers of that Act having ceased as soon as he came of age, and he having obtained the absolute dominion over the property by the means of a recovery of his Buckinghamshire Estate, (to the uses of which this Estate was made subservient,) and in consequence of which he had an undoubted right to grant any Leases he thought proper without the con-

trol of the Duchy, or any one else, so as he kept within the bounds of his own Lease, and within the bounds of the original constitution of the Duchy. And for the Duchy to attempt to avail themselves of this covenant shews the weakness of their case, by being obliged to come to our private Act to bolster it up, which was passed for private family purposes.

They attempt, too, to introduce a negociation, which was set on foot between the Duchy by the advice of their Law Officers and their Council with Sir William Clayton and his Surveyor, Craig, which, on perusal of all the correspondence, I think does them no credit, for it seems to have been set about with an intention to get hold of the tenant-right of renewal from Sir William and his Surveyor, both of whom were ignorant of the extent of Sir William Clayton's interest in the Estate, who, not having any Solicitor on their side, were frightened into this negociation by a groundless charge of having committed waste, by digging and selling brick-earth and gravel, although for the improvement of the Estate, but which was refuted by proving that it was the Trustees of the turnpike-road who took the gravel under the authority of their Act, and that the brick-earth had been brought from off other land to make bricks to be used on this Estate. Now Sir William and Craig had no means of proving the tenant-right of renewal, because all the old Acts of Parliament had been expunged from the edition of the Statutes at large then and now in use, and of course were easily persuaded by the Duchy that there was no tenant-right of renewal, except by courtesy. This correspondence is therefore set forth, in order and with a view to shew and take advantage of any admission which Sir William and his Surveyor, (in ignorance) may have made; and I would ask, was any thing more likely, than after a lapse of more than one hundred and fifty-four years since the constitution was first established by the 21st James, giving such tenant-right of renewal (as I contend,) that the same should, under such circumstances, have been forgotten and lost sight

of, particularly as the bare title only of those ancient Statutes were only set forth. Now this was many years after the property had been all leased out to builders they thus attempted to get possession of the Estate from Sir William. If there had been no right of renewal, why did they not caution the builder in 1777, and tell them so before they laid out their money; but on the contrary, we find that their own Surveyor, Sir Robert Taylor, himself, in 1777, encouraging the builders to take the land for building purposes, by assuring them there was a tenant-right of renewal, and which they might fully rely upon; and this circumstance can be positively proved by witnesses who are now living. I say then this negociation, so set on foot by the Duchy themselves—brought about by threat in the way I have above stated, for I have now all their letters before me—does them no credit. The dates of their letters shew they wanted to drive an advantageous bargain with Sir William and Craig, unprotected as they were, without any Solicitor on their part, whilst the Duchy had not only their Solicitor but all their Law Officers on theirs. I say it was very unfair to endeavour to take advantage of any admission of persons so circumstanced. Then again the Duchy, for the same purpose, and with the same view, and under almost the very same circumstances, set forth in their answer all the correspondence from the death of George Clayton, Esq., from the period the first application for renewal was made in the year 1828. Now at this time many more years had elapsed, and Sir William and his Agent had nothing more to guide them in making that application, or in the management of the negociation for renewal, than the mere bare Letters-patent, and this was the only Title-deed Sir William and his Agent had before them. Nevertheless, the Duchy in their answer wish to avail themselves of every expression favorable to them and against Sir William, which was made by him and his Agent before they were at all aware of the real state of Sir William Clayton's title; and in one of their letters they go so far as to

say, that Sir William had declined to renew, and wrote letters to that effect to others; the truth is, that Sir William Clayton never declined, but, on the contrary, has been always desirous of effecting a renewal on the same reasonable terms his ancestors have done before him, and which, since his title has been thoroughly investigated, he is conscious he is entitled to have. To endeavour to take advantage of any of these expressions so made, I say is also unfair, and again shews the weakness of their case, which is so obliged to be made out. Then they would make it appear, because Sir William and his father have asked for a renewal at such a fine as the Duchy may think reasonable, that this is an admission of their right to impose any fine they like, and to any amount. Now I contend this word reasonable was intended to have reference only to the quantum of fine to be assessed between the two years' rent and one and a half, but not exceeding two years' rent at most of what the estate brought in to Sir William Clayton; for it never could be expected that the old mode of calculating the fine ever would or could be departed from. Then again they say, the former petitions for renewal were so worded as to shew it was a matter of grace and favor for which the tenant prayed. Now I would ask the Duchy, if the words "*desired* their leases to be renewed" are not stronger language than a Copyholder in fee generally uses to his Lord when he goes into Court and *prays* to be admitted tenant to his estate, at the same time knowing the Lord is compelled to admit him. Then they say, it never was intended to grant a Lease for ninety-nine years certain. In this I quite concur with them, because such a Lease would have been void under the constitution, which does not admit of any such Lease, and it would have been a violation thereof; as the Acts which have been passed since the 16th Geo. 3d are a violation of the original constitution, not having the consent of the tenants interested under it, and ought to be repealed as totally inconsistent with, and repugnant to the spirit thereof, and a perfect

violation of the rights and properties of private individuals, inconsistent not only with the constitution of the Duchy, but repugnant to the principles of the constitution of this country. Then they would endeavour to make it appear the fine has been always calculated at the rack-rent, when we can prove that properties let at £20 a year, after being improved by the under-lessee, were re-let by him at a rack-rent of £70; and that land let by Sir William Clayton's father, at £3 per acre, has afterwards been improved and re-let at £6 per acre.

They then deny any participation in the building transaction, or in obtaining the Private Building Act, though at the same time they try to avail themselves of the covenants in it to pay a proportion of the fine, as if that covenant had been introduced for their benefit, and not for the protection of the parties interested under the settlement. Now in respect to their not being parties to the building transaction, I perfectly agree with them that they were no parties to it; nor was it necessary they should have been, because they had no interest in the land; the property in the land was not theirs; they knew it was not; otherwise why did not they take it into their own hands at this time. They have only a revenue arising out of it, and never claimed or thought of claiming any thing more for the last hundred and seventy years. Then they say Sir Robert Taylor was not their Surveyor, nor held any situation under them. I may have been misinformed; but was he not the Surveyor of the Board of Works under the Crown, and in this capacity acted for the Duchy, so far as to protect their revenue but no farther. Then they say, that Sir William and his Lessees have been amply repaid for all their outlay. Now it so happens that some of the houses have been built only about twenty years. How then can the builders of those houses have been amply repaid? And it might have so happened that houses may have been built four or five years only. What then would have become of such reasoning?—And suppose a whole street of houses was to be burnt down

to-morrow, who must build them up? Sir William would be liable, because for the security of their revenue he is bound by his covenants so to do. How could he then be amply repaid? What is to make him recompense for this liability but a perpetuity of interest? Then they would fain make it appear, by giving copies of the letters written to their Surveyors and others whom they got to value the property, that they have acted with liberality. It may be so; only that they have totally mistaken the basis on which they ought to have given their instructions to their Surveyors, and on which mistaken basis the Surveyors have acted, by calculating the fine on the rack-rent value of the property, but of which the Duchy happen to have nothing to do; their enquiry and the estimate of the Surveyor ought to have been confined to and made in the same manner as if they had been sent to estimate a fine payable on a copyhold Estate in fee due to the Duchy as Lords of the Manor of Kennington, according to the custom of that Manor, and under which custom I say the mode of calculating our fine originated, the Lands being part and parcel of the Lands belonging to the same Manor, and so expressed to be in our ancient Letters-patent.

Supposing a Copyholder in fee of the Manor of Kennington, who is subject to such a fine as last-mentioned, had chosen to have relinquished his copyhold interest, and to have taken a Lease or Grant under this new constitution, how would the fine have been calculated in such case on renewal of such Lease or Grant? And the Acts of Parliament are made to embrace Copyholds as well as Leaseholds, and come within its provisions.

The Duchy state in their answer, that on the death of George 4th the Lands and Premises in question became vested in his Majesty. Now this I deny; because the Lands and Premises in question are vested in the tenant by 21st James and all the subsequent Acts to 16th George 3rd, and in consequence this Kennington property is vested in Sir William

Clayton. Here is the mistake: the possessions of the Duchy only are vested in the King, and the revenue arising out of the Land forms a part of those possessions; but the Land itself is vested in the tenant by the constitution of the Duchy, and which has been the cause of the great increase of revenue to the Duchy; for the Lands being of no value in their own hands, were thus given to the tenants in perpetuity, in order to encourage them to build upon and improve the same, and the wisdom of Parliament is fully manifested by the effects produced by the measure, and the revenue of the Duchy is made to follow and go along with the progressive income of the tenant arising from those improvements.

Nearly all the remainder of the answer consists in the introduction of copies of the correspondence between the Duchy and the Agent of Sir William Clayton, and their offer of a renewal on their own terms; in which offer I observe they say, if their terms are acceded to, it would be necessary that proper provision be inserted in the proposed grant with regard to new erections, &c., under the superintendence of their Surveyor. Now I say this is acting as if the property in the Land was their own, and is totally inconsistent with all former usage. Why did they not think of this when the last Letters-patent were granted, wherein there are no such provisions, and wherein there is no covenant to compel the tenant to build one single brick or stone upon the Land,—why; because at this time they knew there was a tenant-right of renewal admitted and recognised by them in various ways, and that it was so understood by all parties connected with the building transaction; and that the tenant was the beneficial owner of the Land, in which they themselves had no farther interest than their revenue arising out of it; they have not even reserved to themselves any liberty of entering on the Land for any purpose, and would be liable to an action of trespass. Does this look like acting as if at this time they considered the property to be theirs? The question of the property being in the tenant

was never doubted till all the Land was covered with building, and until the Duchy began to envy Sir William Clayton's prosperity in getting the Land so built upon and covered; and then they began to set themselves to work how to deprive him of it by passing the Act of 33 George 3rd. I will venture to challenge the Duchy to show me a precedent where the tenant has ever been bound to put a single brick or stone upon the property, or to improve the Land in any way whatever, or to show me one instance of their ever having exercised one single act of ownership over the Lands ever since the Statute of 21st James, or ever since the first Lease of this property was granted under that Statute, or any further or other act of ownership, save what was strictly necessary for the protection of their revenue arising out of the Lands. And I would have them consider what authority they now have to send their Surveyor or any other person over the Lands without the consent of Sir William Clayton, or those claiming under him; and if such person would not be liable to an action of trespass for so doing, since there is no covenant or reservation of any such liberty in the present Letters-patent. And if this fact ought not to lead them to the consideration that they have no right to the possession of the Land itself, or any interest therein, further or otherwise than to protect their revenue arising out of the same; and by introducing covenants for the protection of that revenue, by compelling the tenants to keep in repair what buildings they voluntarily erect upon the property; and which revenue, as respects their fines on renewal, is made to depend on the income the immediate lessee under them can reasonably make; and that they have nothing to do with his under-lessees, or with the rack-rent value of the property. The interest of each party in the Estate is so united, interwoven, and blended together, that the Duchy can no more shake off, or get rid of the tenant, than the tenant can shake off or get rid of the Duchy; their duty and their interest are reciprocal; they have

relative rights and relative duties to expect from, and to exercise and perform to, each other. When a renewal is necessary, the constitution, as established by 21st James, has made it the duty of the tenants to go to the Duchy and *desire* a renewal, in order that the Duchy may come at their revenue by fines, to be taken on such renewals, and has made it incumbent on the Duchy to renew with the tenant, for the sake of their own interest; for, without their renewing, they would voluntarily deprive themselves of that revenue which the Act has provided for them; and, if they refuse to renew, the tenant is placed in a better situation, because, by virtue of the perpetuity of interest given to him by the enacting clause, he would be entitled to hold the Estate without paying any fine; for, notwithstanding the Duchy refuse to renew, he is not thereby deprived of his interest, or of that good and indefeasible Estate in the Land which the constitution has vested in him for the special purpose of getting it built upon and improved. The Duchy have no power to take advantage of their own wrong, and dispossess him of his Estate by such refusal. On the other hand, if the tenant was to refuse to take up his renewal, when renewals were necessary, and offered to him by the Duchy, then, and in such case, I say, the tenant would commit a forfeiture of his Estate in not doing his duty, which the constitution of the Duchy has imposed upon him for their benefit. Renewals are only absolutely necessary at the expiration of thirty-one years' term, or on the death of the survivor of the lives, there being no obligation on the part of the tenants to renew in the intermediate time, they having the power to let their Leases run out before they apply, which you will see admitted by the Statutes of 5th and 6th William and Mary: in such case they would have the amount of three fines to pay at once, but would only have the costs of one Lease to pay for.—See also the Report of the Committee of the House of Commons on this point (5th and 6th William and Mary).

Whilst writing the above, I have just now received the news of Sir William Clayton's death, (on the 26th January, 1834,) at Boulogne. I have too much reason, from his letters to me, to believe these oppressive proceedings have hastened his death, but this lamented circumstance leads me to the following observations:—That his interest or right of renewal survives o the Devisees of the property under his Will, who are the junior parts of his family;—the devise empowers them to raise money, on security of the property, to pay the fines on renewal of the Leases from time to time, and who, of course, must now make a new application, in their own names, for a renewal, on payment of three fines, calculated as heretofore, and to which, I admit, the Duchy are now entitled. The Devisees stand in their father's stead, and are as much entitled to a renewal as their father would have been, in case it had been any other life but his own; and, therefore, this circumstance can make the case neither better or worse for either party (except the one will have to pay, and the other to receive, the amount of three fines at once, calculated as heretofore.) There is this one striking observation produced by the circumstance of Sir William Clayton's death, and which will at once shew the extreme unreasonableness and monstrous folly of the Duchy in attempting to calculate the fine on the rack-rent value of the property, and which, I trust, must convince any Court before which this case is brought, and I hope it may convince the Duchy, that such a basis as the rack-rent value of the property to estimate the fine upon can never be sustained, inasmuch as, according to the fine of £72,000. thus calculated, three such fines would now become due, and which would amount together to the enormous sum of £216,000., being more than six times the value of the fee-simple of an estate at twenty-eight years' purchase; the rental being only £1,238. per annum. The largest amount of fine which, in my judgment, the Duchy are entitled to, will be a fine not exceeding two years' rent on each life, which would amount to £7,428. for

putting in three fresh lives, reckoning a fine to become due on the death of every life as heretofore; and even this would be liable to the usual deductions, so as to come at the nett rent before such calculation is made; I say, a fine thus calculated would be much more consistent with and agreeable to the spirit of the constitution, and with sound reason. The Duchy, as it seems to me, instead of proceeding in the manner they have done, ought to be both thankful and grateful to the Clayton family for having been the cause of such a vast improvement of their revenue, which now is, and which will be, still on the increase, as and when the Leases fall in, and in a few years their fine will amount to many thousand pounds on each renewal, which, when the property first came into their hands, only amounted to about £200.

I shall now conclude my observations, by repeating what I feel convinced of:—That there is a perpetuity of interest given to the tenants by the enacting clause of the Statutes, for the purpose of encouraging them to build upon and improve the property;—that the Leases thereby are made perpetual to the tenants against all succeeding Kings and Dukes of Cornwall, provided they are not made for more than thirty-one years, or three lives at a time;—that the Leases are not to be considered as the end and design of the Legislature, but the means or machinery only by which that end and design is to be effected or carried into execution; the end and design of the Leases being to give the tenant such a perpetuity of interest in the Land, as would be sufficient to encourage him to outlay his capital in building upon and improving the same (and I hold that nothing less than a perpetuity of interest, subject to rent and fines, would be sufficient for such purposes); the Leases are the means by which that perpetuity of interest is to be continually had and enjoyed by the tenant, and also the means to create and secure to the Duchy a succession of revenue to arise out of those improvements, and which is effected by providing that the Leases shall not be made for more than thirty-

one years, or three lives, at a time, thus making the Leases ſ necessity renewable Leases. You will thus see that both the objects which the Legislature had in view are, by those means, wisely accomplished, and which, I contend, could not have been accomplished in any other manner. I would ask the Duchy this plain question:—How can a Lease made by the authority of 21st James 1st., or by any subsequent Statute, for thirty-one years, or three lives, or less, (a Lease being valid if made only for ten years, or one life) be good against all succeeding Kings and Dukes of Cornwall, and all other person or persons who shall *at any time thereafter* have, inherit, or enjoy the Duchy, without its being renewable, and having perpetuity of interest attached to it? I would ask again, if the Legislature has not been careful to perpetuate the tenants' interest, and prevent its being defeated by any change in the limitation of the Duchy itself, as in case Parliament were to alter that limitation, and give the Duchy to the youngest son of the King, or in any other manner, the Lease is made good even against any person inheriting under such new limitation, thus clearly shewing that the intention of the Legislature was, to give that perpetuity of interest to the tenant, which was so strongly recommended by Mr. Glanville, (before the 21st James 1st. passed into a Law) when he said "*Here there must be a* perpetual Estate, *or else the Land will become barren, and the Law must be so made, as Leases shall at all times be made good.*" And, it seeme to me, that Providence has so ordained, that these words should be left on record of the Journals of the House of Commons to serve as a key, at any future period, to unlock the true intent and meaning of that Statute.

J. H.

THE HISTORY

OF THE

CONSTITUTION

OF THE

DUCHY OF CORNWALL,

AND ITS TENANTS,

AS ESTABLISHED FOR THE MUTUAL BENEFIT OF BOTH PARTIES, BY AN ACT OF PARLIAMENT PASSED IN THE 21ST YEAR OF THE REIGN OF KING JAMES THE FIRST, A.D. 1622,

FOR THE

Purpose of getting the Duchy Lands built upon, and improved at the Tenant's Expense, and of giving the Tenants vested Interests in the Lands, in order to encourage them to Outlay their Capital and Industry thereon, for their benefit, and to make Provision for themselves and Families; such vested Interest to be had and enjoyed by means of renewable Leases, producing a Revenue to the Duchy from Fines to be taken on such Renewals; showing, to a Demonstration, that the Tenants derive their Title or Perpetuity of Interest under the Acts, and not under the Leases, except so far as they are the Means or Machinery by which the Constitution is made to work, and the Means by which the Intention of the Legislature was to be carried into effect.

AND CONTAINING

A REFUTATION

OF ALL THE

ARGUMENTS OF THE LORD CHANCELLOR,

Which he was pleased to make use of in his Judgment of the Clayton Case, in respect of an Estate at Kennington, in Surrey, held under the Constitution, brought before him in May, 1834.

WITH A FEW OBSERVATIONS

ON THE

ACTS OF 33 GEO. 3d; 7th AND 8th GEO. 4th; AND 1st AND 2d OF THE PRESENT KING;

Showing that these Acts have been procured to be passed in direct violation of all former Acts relating to the Constitution of the Duchy, and of the just and vested Rights and Interests of the Tenants, and of the absolute necessity which exists of a strict Parliamentary Enquiry into this Case, and into the Conduct of the Officers of the Duchy in this respect.

LONDON:

J. BETTS, PRINTER, 7, COMPTON-STREET, BRUNSWICK-SQUARE.

1834.

PREFACE.

In the year 1830 I collected all the Acts of Parliament together relating to the Duchy, and have since considered them, without being able to form any other opinion of the end and design of the Legislature than what I have given in the Title-page; but since I have heard and considered the arguments of the Lord Chancellor, which he was pleased to make use of in the Clayton Case, on the Motion for an Injunction, I have been more than ever confirmed in that opinion; and my object in publishing the following pages is to convince his Lordship and others, that he has taken an entirely wrong view of the Case, and in order to induce a Parliamentary Enquiry into this very important subject.

J. HAINES.

38, Tonbridge-street, New-road,
London.

THE HISTORY

OF THE

CONSTITUTION

OF

THE DUCHY OF CORNWALL,

&c. &c.

The Constitution of the Duchy of Cornwall and its tenants, as established by the 21st James, A. D. 1622, for the benefit of both parties, being but little known, and less understood, even by the learned profession; and as it is likely to become a great public question in Parliament, I beg to present, not only for the information of the tenants of the Duchy, but the public in general, some acocunt thereof.

In the year 1333, King Edward the Third, by charter, settled the possessions of the Duchy of Cornwall on his eldest son, Edward the Black Prince (whom he created the first Duke of Cornwall) and his heirs, eldest sons of the kings of England, for ever; and in default thereof he directed the same to revert to the Crown, *to be retained* until another Duke became extant, to whom the same is given in like manner.

In consequence of there being no power of leasing in this charter, the lands for the greatest part remained barren and

uncultivated; for the Duchy being liable continually to shift from the Duke to the King, and back again when there was a son to inherit the Dukedom; the longest duration of interest the tenant could possibly enjoy was, when he had taken a long lease, and when there happened to be no son to succeed to the Dukedom, in which case only his lease might be good for so long of his term as the King might happen to live. Such uncertain duration as this, though it might by possibility last many years, offered no encouragement for improvement. Thus the Duchy lands lay for many centuries totally unimproved, until the necessity for Parliament's taking it under its own control and management became most obvious. Accordingly the Parliament of James the First, in the year 1622, established a constitution, (the measure having been previously planned and constructed in Committee), by which the tenants should for ever after hold their lands of the Duchy in perpetuity, by means of renewable leases; the Parliament at the same time taking care of the interest of the Duchy, by providing that the same rent as had been usually received should be reserved to them, in and by the said leases.

This measure was so established with a view to public advantage, and for the purpose of getting all the lands of the Duchy throughout the kingdom built upon, manured, and brought into cultivation, at the tenant's own expense, giving him such an interest in the lands as would encourage him so to do; and, at the same time, to create a corresponding revenue to arise to the Duke of Cornwall, or who else might be entitled thereto, by fines to be taken out of those improvements. And the Parliament of James found it necessary to give to the tenants a *vested* interest in the lands for this purpose, as will be seen by what the leader of the House of Commons declared.

During the progress of this Bill, Mr. Glanville, an eminent lawyer (then the leader and afterwards Speaker of the House of Commons,) thus declared to the House, "*There must be a perpetual estate, otherwise the lands will be barren and*

the law must be so made as that leases shall at all times be made good," and this because it was necessary, from the peculiarity of the tenure under which the Duchy itself was holden, that the tenant's title should, at all times, be made good, in order that he might be enabled, as he improved the lands by building and cultivation, to borrow money on mortgage of his lease, with his vested interest or the right of renewal thereof, in order to carry on such improvements, or otherwise to dispose of his beneficial interest therein, for the benefit of his family, or in settling the same on his children, or otherwise.

The above words of Mr. Glanville are recorded in the Journals of the House of Commons at this period, 1622, by which is shown the necessity which existed for giving the tenants a *perpetual estate,* in order to prevent the lands from being barren, and as an inducement to the tenants and other persons to adventure their capital in building upon, manuring, and improving the land, and bringing the same into a good state of cultivation, with a view to benefit themselves and families, and, ultimately, for the good of the public.

As the Acts run nearly all alike, I shall give a copy of the original Act in full, noticing the amendments and alterations in the subsequent Acts as I go along—first mentioning that the Acts ARE NOT "Acts enabling his Majesty to grant leases," though the titles of them run so, and by which many have been misled; but are Acts to establish a constitution, and to give the tenants such a good and indefeasible estate as would be sufficient to encourage them to an outlay of their capital in building upon, and improving the lands, by making all leases made and to be made good in perpetuity against all succeeding Kings and Dukes of Cornwall, who should *at any time thereafter* have, inherit, or enjoy the Duchy, and afterwards providing that this perpetuity of interest should attach itself to all leases which are not made for more than 31 years, or three lives at a time, and provided the other minor provisions were complied with.

COPY OF THE ORIGINAL ACT.

21 James I. c. 29. A. D. 1622.

AN ACT to enable the Most Excellent Prince Charles to make leases of lands parcel of His Highness' Duchy of Cornwall, or annexed to the same.

IN most humble wise beseecheth your Most Excellent Majesty, your humble and obedient son and suppliant, Charles, Prince of Wales, Duke of Cornwall and of York, and Earl of Chester, That whereas your said suppliant is seised of the said Dukedom of Cornwall, and the possessions thereof, of a state of inheritance under a special form of limitation, differing from the ordinary rules of inheritance of the common law, whereupon some questions do grow whether leases made by your said suppliant of any manors, lands, tenements, or hereditaments, parcel of the said Duchy, or annexed to the same, should be good and effectual in law, longer than your suppliant's life: for avoiding of which doubt, *And to the end that such persons as have taken, or shall take, leases from your suppliant, may be sure to have good estates, and so to be encouraged to bestow charges in the building and maintaining of their houses, and good manuring of the manors, lands, tenements, or hereditaments, so demised, or to be demised to them.*

II. May it please your Most Excellent Majesty, that it may be ordained and enacted by your Majesty, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled; And be it *ordained, established,* and enacted, by authority of this present Parliament, That all leases made, or to be made, by your said suppliant, of any manors, lands, tenements, or hereditaments, parcel of the possessions of the said Duchy of Cornwall, or annexed to the same, shall be good and effectual in law, according to the purport and content* of the said leases, against your Majesty, your heirs, and successors, and against your said suppliant and his

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* Design and intention.—Cowell.

heirs, and against all and every other person or persons that shall* inherit or succeed according to the said limitation or otherwise.

III. Provided always that every such lease so made, or to be made, of any manors, lands, tenements, or hereditaments in possession, be or shall be made by deed indented, and but for three lives, or fewer, or for one and thirty years, or under, or some other term of years, determinable upon one two or three lives, and not above; And if such leases be made in reversion, that then the same, together with the estates in possession, do not exceed three lives, or the term of thirty-one years, and not in any wise dispunishable of waste; and so as upon every such lease be or shall be reserved the *ancient or most usual rent*, or such rent as hath been yielded or paid for the greater part of twenty years next before the making of the said leases, and was or shall be reserved due and payable by or to him or her that had or shall have the inheritance or other estate of the said manors, lands, tenements, or hereditaments; and where no such rent hath been reserved or payable, that then upon every such lease there be, or shall be, reserved a reasonable rent, not being under the twentieth part of the clear yearly value of the manors, lands, tenements, or hereditaments contained in such lease.

IV. And be it further ordained and enacted, by authority of this present Parliament, that all covenants, conditions, and reservations and other agreements contained in every such lease, so made or to be made as aforesaid, shall be good and effectual in law, according to the *words and contents* of the same, as well for and against them to whom the reversion of the same manors, lands, tenements, or hereditaments shall come, as for and against them to whom the said leases shall come respectively, as if your suppliant at the time of the making of such covenants, conditions, and reservations and other agreements had been seized of an absolute estate in fee simple, in the same manors, lands, tenements, or hereditaments.

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* The subsequent Statutes have the words here, "at any time hereafter;" and, "or by virtue of any Act of Parliament or other limitation whatsoever."

SAVING always to all and every person and persons, bodies politick and corporate, their heirs and successors, executors, administrators and assigns (other than your Majesty, your heirs and successors, and other than your suppliant and his heirs, and all and every person and persons that shall inherit or succeed according to the said limitation or otherwise) all such rights, titles, estates, customs,* interests, terms, claims, and demands whatsoever, of what kind, nature, or quality soever, of in to or out of the said manors, lands, tenements, or hereditaments, or any of them, as they, or any of them, had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample a manner and form as if this Act had never been had or made, this Act or any thing therein contained to the contrary notwithstanding.

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It will be seen that the principle end and design of the Parliament, was to give to the tenant such a good and indefeasible estate in the lands, as would be sufficient to encourage him to outlay his capital in building upon, and otherwise improving the same; and the way Parliament has done it is this: —It, in the first place, establishes that all leases made and to be made should be perpetual leases, good against all succeeding Kings and Dukes of Cornwall, who should "*at any time thereafter*" have, inherit, or enjoy the Duchy, not only by virtue of the limitations contained in the charter of King Edward the Third, but by force of any Act of Parliament or other limitation whatsoever. Thus it is clear, that if Parliament were at any future period to alter the limitation of the Duchy as it now stands, (and it seems it has the power of so doing) it would be still subject to the tenant's rights and interest which he has taken under this new Act or Constitution *so* established for the government of this property.

After so making all Leases good in perpetuity, the next thing

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* The word *tenures* is introduced in 22nd Charles II., and *indefeasible estates* in subsequent Acts.

the Parliament does, is, to provide and to declare to what description of leases such perpetuity shall attach *after the leases shall have been made.* Therefore, this Act is the standard to which all leases are to be brought and tried, to see if they are good after they shall have been made; *and is not an Act to enable his Majesty to make leases, there being no words to that effect,* (except in the title, which has nothing to do with its construction), but is declaratory only what shall be good leases after they shall have been made. The leases are not made under any power at all; for it was necessary, in order to bring those tenants, who prior to this Statute, held leases (not exceeding those terms) within the pale of the constitution, to put the same stamp of perpetuity on their leases, (which had been previously granted,) as on those to be granted under the constitution, in order to encourage those old tenants to build and improve likewise.

Thus, then, the tenant has his perpetual estate given him by the Act, which Mr. Glanville recommended as necessary to be given him; but it was equally as necessary that he should have and enjoy this perpetuity of interest by means of renewable leases, in order to secure a revenue to the Duke, or others entitled thereto, by fines to be taken on renewals. And the Acts provide and point out the very mode and manner in which the leases are to be renewed, both in possession and in reversion; and which would not have been at all necessary in case renewals were to have been a mere matter of favor or courtesy—the point which the Duchy are now so unjustly contending for.

Now it will be obvious that renewals must have been intended by the legislature, or why was the ancient rent only to be reserved, if another description of revenue was not in contemplation, *i. e.* in fines to be taken on renewals; and it is a question with me to whom this description of revenue belongs, when there is no Duke; it comes from the public, produced

by their outlay of capital, and not from the Duchy; and reason seems to say it ought to return back to the public; and it is said in the 13th 14th Charles 2nd, that the outlay of the tenants had been productive of *great advantage to the public;* I don't know what else could occasion this expression. The former rents are directed to be reserved to the Duchy; and, therefore, they are secured from any loss by this arrangement; then, who are the proper parties to reap the advantages of all those heretofore contemplated, and now realized improvements, is a question for the consideration of Parliament.

The words in the saving clause (other than his Majesty, &c.) seem to shew that all the beneficial ownership of the lands were from that time abandoned by the Duchy, and given up to the tenants, so far as respects the surface, which confirms me in my view of the case, in that respect; and the leases are in accordance with this idea, they excepting all mines, &c.; and the tenant is left perfectly at liberty to do what he will with the surface of the land, which was not the case before the Act was passed.

Many of the Duchy lands were held by fee farm rents; and, consequently, the proprietors become the real owners; and the saving clause saves to them and others, all their rights and interests which they had prior to the passing of the 21st James; but it shuts out the Duchy in order to shew they had taken leave of their estate and interest in the land, in exchange for a better interest; for they have their usual rent secured to them which they enjoyed before, as well as the fines to be taken on renewals being secured, so as to be payable by the tenant, either to the Duke or other persons entitled thereto, in exchange for the perpetuity of interest given to the tenant—leaving the fee (such as it is) still in the Duke or King.

Thus it will be seen, that the intention and design of the Legislature was to make the leases renewable-leases; and they are, therefore, to be considered only as the machinery by which

the constitution was to be continually made to work; and the tenants' interest kept on foot by renewals, when, and as often as he should *desire his lease to be renewed.*

It will also be seen, that the Parliament have a controling power over the Duchy, as having undertaken the improvement of the Duchy lands, by establishing a constitution, in behalf of and for the benefit of the tenants. They are, therefore, bound by every principle of honor and good faith, to see that the tenants are properly protected under it; and to redress their wrongs and injuries, whenever they are oppressed by the officers of the Duchy, according to their usual practice; and of which the Acts themselves record two instances, viz.: one, where they had unjustly, and in violation of the constitution, increased the ancient rent; and the other, where they had charged the tenants such exorbitant fees as prevented them taking up their renewals *so often as, otherwise, they would have done.* This circumstance alone, without the aid of any other, shews the tenants have a renewable interest, which the officers of the Duchy cannot take away from them.

1st CHARLES I.

Immediately after the 21st James was passed. It appears that the tenants and very many others, who had capital to invest in the improvement of this property, entered into contracts with Prince Charles, not only for leases but for *estates,* and paid him fines, in pursuance of and according to such contracts: and that the King had entered into treaty with others for the like estates. Now, I should like to know, what kind of estate this was, unless it was the tenant-right of renewal; for I cannot suppose a man could be such a fool as to pay a fine for the liberty of laying out his money in building upon and improving another man's estate, besides paying him a rent, had he not a permanency of interest beyond a 10, 20, or 31 years; or beyond his own life; or beyond any lease he could take within the constitution. King James having died,

and Prince Charles having come to the throne, it was necessary that the contracts which had been made by him, should be completed by leases; and of course it was his duty to perform his contracts with his tenants and those who had so consented to embark their capital; and this is nothing more than the law would have obliged any common person to have done, although it is here said, "that he was *graciously pleased* to do so;" therefore, to do what he would have been compelled to have done by law if he had been a subject, cannot, by any possibility, be construed that he was at liberty in honor and conscience to refuse to do it. I mention this here, because the Lord Chancellor, in another place, wishes to draw the inference, that he was at liberty to do as he pleased, because it is said he was *graciously* pleased to do that which in common justice he ought and was bound to do. The leases granted by Charles I. were the first leases granted under the constitution; and so far the constitution had worked well; but it was found expedient to encourage others to come under it; and with that view this Act of Charles I. enacted, that all leases *to be made* within *three years* should, in like manner, be good in perpetuity against all persons who should *thereafter* have, inherit, or enjoy the Duchy by force of any Act of Parliament, or other limitation whatsoever; and provides to what description of leases such perpetuity shall attach, *i. e.*, to leases made for thirty-one years, or under, or for one, two, or three lives, and not above. It has the same enactment as to the covenants, and the same saving clause.

The Statute of James was directory only, how and in what manner Leases should be made, in order to make them good renewable leases under the constitution; and the Prince was enabled to make such sort of leases as should be good, because the Statute had pointed out three kinds of leases, which should be good legal leases in perpetuity, and therefore he could make them agreeably to the directions given by the Act, and in this sense he was by the Act enabled to make those different

sorts of leases, of which the tenants were to have their choice. There are no words in the Act which enable him to make any lease, the Act only providing what sort of leases should be good after they were made. It is said, which leases His Majesty was enabled to have made in his Father's life-time, by the Act of James; but he was only enabled to follow the directions of the original Act, which enacted, that all leases made or to be made should be made in this particular way, and according to the standard rule laid down. The leases made by the Duchy are not made under any power, they are only made according to the direction of the Act, so as to make them good renewable leases in perpetuity.

It will be observed in the Act 1st Charles I., the word *hereafter* is introduced, as an amendment of the constitution, making all leases to be made good against all succeeding Kings and Dukes, who should thereafter inherit the Dukedom by force of any Act of Parliament, or other limitation whatsoever. This is an improvement in the constitution, and shews that Parliament has the control over this property, and might, if it thought proper, limit the Duchy to any other use than it now stands limited to; subject, nevertheless, to the rights and interests of the tenants under it. And here it will be seen, that it is put out of the power of Parliament itself to do any thing to destroy the tenants' rights, who have an indefeasible estate in perpetuity, which is provided should be had and enjoyed by means of those renewable leases. The covenants are to be made good against all persons to *whom the leases shall come;* and this shews that the estate the tenant took was to be transmissible to his descendants, and there is the same saving clause as in the original Act.

DURING THE COMMONWEALTH.

It appears from the recital of the next Act, that the tenants being thus confidently fixed and settled in their estates, con-

tinued their work of building upon and improving this property as their own (subject only to the qualification of having and enjoying the same by means of renewable leases) to a very great extent, and which clearly shews the constitution thus established by 21st James had worked well and answered the purpose intended; and that in consequence of that confidence, and being so fixed in their estates, great sums of money had been laid out and expended by the tenants, *to the great advantage of the public*, as the Act admits. Even the Civil Wars and Cromwell's Usurpation, it seems, did not operate to abate that confidence. That leases were granted even during the Common Wealth is certain, as it will be seen that in the reign of William and Mary, leases were made good and confirmed which had been made in the time of Charles II., that is, whilst he was absent from the kingdom, even fifty or sixty years after they were made; and this proves they were renewable leases; otherwise they must have been expired, and, of course, would not have wanted to have been made good and confirmed.

During the absence of Charles II. those leases which were renewed or granted by the authority of Cromwell were found to be not legally renewed or granted; and the terms for which legal leases had been granted were fast running out: and the consequence was, that the machinery of the constitution being interrupted by the absence of King Charles II. from the kingdom, the tenant's title became so embarassed that he could neither sell nor mortgage his property, nor convert it to the interest of his family without renewals being first legally effected, or his voidable lease being made good and confirmed.

In this state King Charles the Second, on his Restoration in 1660, found his tenants. And the first thing that Parliament did on the Restoration was, to relieve them, by setting the machinery of the constitution at work again, through him, as appears by the following Act:—

13th & 14th CHARLES II. 1660.

The constitution having been thus suspended for nearly thirty years, owing to the Civil Wars, Cromwell's Usurpation, and the absence of the King from the Throne, and no Act having been passed since the year 1625, which limited the time of granting leases to the three years then next ensuing; the tenants' renewable leases were now nearly running out, and their title to their lands would soon have been in abeyance, they were, of course, greatly disturbed for want of their leases being legally renewed, and became disheartened on account of the absence of the King, with whom alone renewals could be legally effected: and many of the tenants, no doubt, were likely to be impoverished, because their leases had nearly run out, and they could raise no money, and could make no use of them for the benefit of their families; and their houses and lands would soon have been dilapidated and become barren if this state of things had continued. But, it must be borne in mind, that all this arose, not from any fault of the tenant, who was entitled to his renewal, and who was desirous to renew, provided an Act could have been passed to make good all leases made and to be made within a time to be therein mentioned, (the time in the last Act having been then many years since expired.)

Charles II. being at length restored to the crown in 1660, the tenants applied to Parliament, as the parents of the original constitution, for redress, they being desirous of having their leases renewed. The Parliament, as was their duty, communicated the tenants' desire to the King, who was graciously pleased to do that which, by the original constitution of the Duchy, was his duty to do, as well for the interest of the Duchy, as of the tenants and the public.

The Duchy and its officers, authorised by Parliament to grant the leases, are the mere instruments in the hands of Parliament to keep the machinery of the constitution at work; in fact,

they form part of the machinery, in granting the leases to the tenants at all times, when they may desire their leases to be renewed; the Parliament having the full control over the property, and over the officers of the Duchy, as is manifested by the Acts themselves, even to varying or altering the limitations thereof; subject, nevertheless, to the tenants' vested rights; they have power to alter and amend the constitution, as they may think proper, for the protection of the tenants' estate and interest, and to cheque and control the officers of the Duchy, when they commit any exaction for fees, or otherwise, and which they have done, even under severe penalties. All this is evident from the statutes themselves.

Now this Act of 13th & 14th Charles II. recites, " that the lands had been held by sundry leases thereof made for years, and for one, two, and three lives, and that by means whereof the tenants *having fixed estates, had been encouraged to improve and manure the same, and had improved the same, and therein laid out great sums of money in building and otherwise, to the great advantage of the public;* and that for twenty years or more, then last past, no such leases had been *legally made,* so that it was probable most of the tenants' estates would be determined, or near determination, ere any of them could be *well and legally renewed,* by means whereof waste, spoil, and dilapidation were likely to happen, the lands to be worn out and decayed, and great disturbance and impoverishment to the tenants, unless remedy therefore were provided,

Then it enacts that all leases *made or thereafter to be made* by the King, by Letters Patent, or otherwise, should be good against the King, his heirs and successors, and against all and every person or persons that should *thereafter* have, inherit, or enjoy the Dukedom of Cornwall, *by force of any Act of Parliament, or other limitation whatsoever.* And provides that the leases should be made but for three lives, or fewer; or for thirty-one years, or under; or for some other term of years determinable upon one, two, or three lives, and not

above. And that if such leases were made in reversion, that then the same, together with the estates in possession, should not exceed those terms. And so as upon every such lease should be reserved the ancient rent *or more*, or such rent as had been paid for the greater part of twenty years before, and made payable to the person entitled to the Duchy; and where no rent had been reserved, then a fourth* part of the clear yearly value. Then follows the same clauses as to the covenants, and the same saving clause as in the original Act.

Now here is, in the first place, an acknowledgment by the legislature, that leases had been granted for one life only; and, it says, by means of which lease for one life, the tenant had such a *fixed estate* as had encouraged him to lay out great sums of money in building upon, manuring, and improving the land, to such an extent as to be of great advantage to the public. Now, I should like to know, how a lease for one life only (without the right of renewal being attached to it) could have been such an interest as would encourage a tenant to outlay his capital and industry; or how it could be called a fixed estate, since it was liable to determine every moment. And if a lease for three lives absolute, without a right of renewal, as is stated by 33rd Geo. III., 7th and 8th Geo. IV., and 1st and 2nd of the present King, is declared *not* to be a sufficient interest for that purpose, how happened it that a lease for one life only, was and had been a sufficient interest (as it was acknowledged by this Act to have been). It is evident, therefore, beyond a doubt, that the tenant's right of renewal was attached to the lease.

I should also like to know, how the words *fixed estates* can be applied to a term, which of itself is not fixed by the Act, but left to the discretion of the tenant for *the purpose*, that he might take as short a term as he chose, in order to give him an opportunity of trying the nature and quality of the land,

* This was altered in the next Act to the twentieth part.

before he ventured to build upon it. And if this Act does not admit that the tenants *had estates to be renewed,* as well as leases. And how the tenants could be said to be likely to be impoverished, if they had no interest to impoverish, and if their capital had not been invested in this property. And if it was not likely, that at a time when every effort and arbitrary means were used to raise money, for the purposes of King Charles II. on his restoration, that he would have seized this property into his own hands, and raised money by granting it to others, had he had such a power. He did not, however, attempt to do any such thing; all that was done was to introduce the words *or more,* after the words ancient rent. And it will be found that the then Lords of the Treasury, as one of the arbitrary measures resorted to to raise the King money, taking advantage of the introduction of those words "or more," issued an order to increase the ancient rents, contrary to and in violation of the original tenure, and of the tenants' vested rights and interests, who were entitled to their leases at the ancient or most usual rent, to which alone the Duchy were entitled under the constitution. Of this violation of their rights, the tenants very justly complained; and their complaint was redressed by the very next Act which was passed, and which was as soon as it could be redressed. Now, I would ask what could give the tenants this *right to complain, and a right to have that complaint redressed,* unless they had a vested interest in this property under the constitution; or, in other words, a vested right of renewal; and of which it clearly appears the Duchy had not the power to deprive them.

It is to be remarked, that this Statute of 13th and 14th Charles recites also, that on the like consideration, King Charles the First was, by special law, enabled to make such leases—what leases? why, such leases as would give the tenants a fixed estate, and encourage them to improve the land, and to lay out their money in building houses, barns,

stables, and necessary erections; which it is evident to any man of common sense, could never have been done unless a renewable interest had been created.—Prior to the Statute of James I. (which established the original constitution) it was in the contemplation of Parliament to bestow some great favour upon Prince Charles for his benefit; and this was the favour bestowed, in creating this renewable interest, and giving him the fines in addition to his rents secured to him by the Act, which fines he received in consideration for the first granting of these renewable leases, and from which he derived the benefit intended to be given him by Parliament, by and from those persons who had capital to invest under this newly-created constitution.

This Statute 13th and 14th Charles II. holds out the constitution again as a boon to other adventurers for another term of three years, in order to invite fresh tenants to come in, and take leases under it, and take the benefit thereof. The constitution being so wisely constructed, that whilst, on the one hand, it gave the perpetual estate (as recommended by Mr. Glanvylle) to the tenant for his benefit; on the other hand, provided, that that interest should be had and enjoyed by means of renewable leases; making it the interest of the Duchy or the Treasury to renew, (for without renewals no revenue by fines could have arisen to the public treasury;) the interest of both parties being so united as never more to be separated, there being a union of interests, dove-tailed as it were into each other: the tenant, on account of his great outlay, taking the greater interest, and the interest of the Duchy or the public, being made to depend on the improvements made by the tenant, and following it as a shadow follows the substance. It appears to me, that all the fines got from renewals, when there was no Duke, were heretofore paid into the public treasury, as being the property of the public, from whom they were derived, by and through their outlay and industry; and that the rents only, which are

secured to the Duke by the Acts and made payable to him, are his own private property; and ought to be banked up and retained in the absence of any Duke, for the benefit of the next succeeding Duke, and as a fund for the better support of his dignity, in order to prevent the public from being unjustly taxed for his support.

It appears that the Lords of the Treasury, (whether by mistake or design is rather uncertain), had increased the ancient rents, about or at the same time they raised the Crown rents; in order to procure money to carry on the Government. As to the Crown lands, they had a right so to do, because there is no constitution to govern that property, as there is in respect of the Duchy lands: but as to the Duchy lands, they had no power so to do; and of which excess of authority, the tenants afterwards complained.

22nd CHARLES II. Chap. 6.—A. D. 1669.

I believe I stated before, that some part of the Duchy lands had been, prior to 21st James, granted out on fee-farm rents in the same manner as the crown lands—this is clear, for this is an Act passed, intitled "An Act for advancing the sale of fee-farm rents and other rents." And it recites, "that his Majesty was seised of several fee-farm rents, and other rents in right of his crown, some whereof were parcel of his Highness' Duchy of Cornwall. This will, in some measure, account for the unappropriate titles given to all the Acts, which seem to me to have been given to prevent the perpetuity of interest, (intended to be given the tenant,) from working itself into a fee-farm, by lapse of time or otherwise.

22nd CHARLES II. Chap. 7.—A. D. 1669.

The tenants having so very justly complained of their tenure being violated by the Lords of the Treasury increasing the ancient and usual rent, which by the constitution was directed to be reserved; the Parliament as was their duty,

passed this Act of 22nd Charles, to restore the tenants to their legal and vested rights and interests under the constitution. And it will be seen how, by this Act, the Parliament have exercised their power and authority over the Duchy, in order to protect the tenants' rights from future violation. And this is deserving of particular study and consideration, because it amends the original constitution, in no less than eight different places, all for the protection of the tenant.

This Act recites "that many of the lands belonging to the Duchy of Cornwall had been granted by lease to the tenants, some for the term of one, two, or three lives, and some for divers years, determinable upon one, two, or three lives; and others for thirty-one years, or under; *which leases were desired to be renewed by many of the said tenants*. And that of late years divers increased rents had been reserved, as well upon the said leased lands, as upon many copyhold estates of the said Duchy,* for the improvement of that revenue; *whereof the tenants had complained* to the King's Majesty, who was graciously pleased that they might compound with his officers, for the discharge of the said increased rents, and be restored *to the old rents formerly paid for their respective tenements and lands*; then to the end, the same might be accordingly effected, and the said tenants might be encouraged to renew *their leases and estates*, and thereby the better enabled to repair *their* houses and provide for *their families*, and to improve *their lands* holden of the said Duchy," it enacts, that all leases made or to be made, within three years then next ensuing, by the King by Letters Patent under the Great Seal of England or Exchequer, should be good in law, according to their purport and content,†

* In Cornwall, where the copyhold tenants are admitted to hold to them and their heirs, they hold the same lands by leases, renewable from seven years to seven years, at reserved rents, and subject to fines for renewal.—See Concannon's Report of the Case, *Rowe* v. *Brenton*.

† Design and Intention—see Cowell.

[as renewable leases] against the King, his heirs and successors, and against all and every other person and persons that should *at any time thereafter* have, inherit, or enjoy the said Duchy, by force of any Act of Parliament, or by any other limitation whatsoever: provided, the leases should not be made for more than one, two, or three lives, or for thirty-one years, or under, or for some term of years determinable on one, two, or three lives, and not above. And so as upon every such lease should be reserved the ancient rent *or more**; or such rent as had been paid for the greater part of twenty years next before the year of our Lord, 1660, and should be reserved to the person who had the inheritance, or other estate of the said Duchy; and where no rent had been reserved, then there should be reserved a reasonable rent, not being under a twentieth part of the clear yearly value of the lands. And this Act declares that all *leases and grants otherwise made or to be made, should be null and void.*

And it enacts that all covenants, &c., should be good, according to the *words and contents,* for and against them, to whom the *interest in the said leases* should come.

In the saving clause in this Act is introduced the word *tenures,* for the first time. There is also an enactment, that if any tenant within three years compounded with the Treasury for restoration of the increased rent back to the ancient rent; such increased rent should cease, and the ancient rent only should thenceforth remain as a *rent charge* upon the same lands, and none other.

Now, it seems to me, that Parliament not only stepped in and interposed their authority on the behalf of the tenants, in

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* This was not to give the power to reserve more than the ancient rent, but only to make good any leases that might have more than the ancient rent reserved, so that the leases should not be void on that account.

restoring them to their just rights, which had been so unjustly violated, but it has put the perpetuity of interest, intended to be given to the tenant under the constitution, beyond the possibility of a doubt.

In the first place, it recognizes the exercise of the right of renewal, by reciting that the leases were *desired to be renewed by many of the said tenants*—in order to shew the tenant had this right in himself, under the constitution so established.

In the second place, it recognizes the right the tenants had to complain against the officers of the Duchy, for violating their tenure, and provides a remedy; for, if they had had no vested interest, they could not have had this right to complain: nor is it likely at this period their complaint would have been redressed.

In the third place, it recognizes the tenements and lands to be the property of the tenants, in order to shew that they had a vested interest, equal to a copyholder, both tenures being brought within the pale of the constitution, and both tenants enjoying the same privileges under it.

In the fourth place, it encourages the tenants to renew *their leases and estates*, (they having an estate in their leases,) that they may be the better enabled to repair *their* houses, and provide for *their families*, and to improve *their lands holden of the said Duchy;* for though the lands were held under the Duchy, the tenants were, to all intents and purposes, holding their own lands and tenements; and they had every interest the Parliament could give them in the surface, except the fee or other estate, which still remained with the Duchy, such as it was under the Charter of Edward III.

In the fifth place, the leases are made good, not only against the King, his heirs and successors, but against all and every other person or persons, that should *at any time thereafter* have, inherit, or enjoy the Duchy; and that not only by virtue of the limitations contained in the Charter of Edward III., but

by force of any Act of Parliament, or other limitation whatsoever. So that it effectually prevents any possible misconstruction of the Acts, by making the leases good against all persons who should *at any time thereafter* have, inherit, or enjoy the Duchy; words which carry perpetuity along with them, and shew that the intention of the legislature was that the leases should be good for ever, and not for the time being, or during the term granted; and to give the perpetual estate to the tenant, as was so strongly recommended by Mr. Glanvylle, on the making of the original constitution; and it shews that the tenants' interest is derived under the Acts, and not under the leases, which are only the machinery of the Acts; and is that good and indefeasible estate which the legislature in the preambles of all the Acts proposes, promises, and undertakes to give to the tenant, and which it has so given.

In the sixth place, and which is very important to observe, this Act of 22nd Charles shews that Parliament were determined to protect the tenants' rights and interest under the constitution, of which the tenants were members, and under which their title was derived, and to the advantages of which they were so justly entitled; being a constitution made more for their benefit and protection than for the Duchy's, whose interest seems to have been confined to the rents reserved on the leases; the renewal fines being the interest of the public, was made to follow the interest of the tenants; and, therefore, this Act especially provides, *that all leases and grants otherwise made or to be made should be null and void*, (which is a point worthy of consideration), as it was for the protection of the tenant's title that this barrier was placed around the constitution, to preserve it from further violation by the officers of the Duchy; and this barrier or fortification is continued through all the Acts down to the 16th George III.; but, notwithstanding all which, you will find, that those officers have procured Acts to be passed in direct violation of it, as I shall shew when we come to the Acts.

In the seventh place, there is the word *tenures* for the first time introduced into the saving clause, and this shews it was a violation of the tenure, which was complained of by the tenants; and, therefore, still further to protect the tenant, the word tenures was here inserted, and is continued throughout all the subsequent statutes.

In the eighth and last place, the ancient rent only, (after redemption from the increased rent), is to remain as a *fixed rent charged on the premises;* and this shews again the tenant has such an estate, as the Duchy cannot deprive him of, for if the Duchy are for ever after deprived of the power of raising the rent again, it must of necessity follow, that the tenant has such an indefeasible interest in the land, as he cannot be deprived of by the Duchy, or even by the Parliament itself. Indeed, so far as I can see, the Parliament are the guardians of the tenants' rights and interests, and have every power to make the Duchy officers do what they ought to do; their power of granting leases being not delegated to them by Parliament for the protection of the interest of the Duchy as regards their rents only; but also for the protection of the public, as regards the fines taken on renewal; and to that public they are answerable and accountable for those fines, as much as they are answerable and accountable to the Duke, or the trustee for the succeeding Duke, for the rents directed to be reserved in the leases.

Thus, it will be seen that the Parliament not only stepped forward in the behalf of the tenants to see their wrongs and injuries redressed, but they did all in their power to prevent any violation of the tenants' rights in future, by amending and stopping every hole and crevice in the constitution—to prevent the officers of the Duchy from ever again invading those rights, and moreover placed a barrier around it for ever, by enacting that all leases made, otherwise than according to the original constitution, *should be null and void;* and which is continued from this period through all the sub-

sequent Acts, down to the 16th George III., under which the late Sir William Clayton's Father took his last lease; and by which it will be found his younger children still hold the estate, notwithstanding all which has been so unjustly done to deprive them of it.

25th CHARLES II. Chap. 3.—A. D. 1672.

This Act is a re-echo of the 22d Chas. 2d. last-mentioned, as to the tenants desiring their leases to be renewed,—the increased rents—the tenants' complaint—the remedy—the treating the property as being the property of the tenants held under the Duchy; and it gives the same perpetuity of interest provided the leases were made under its provisions. It holds out the constitution as a boon to others for three years longer, in order to induce others to come in and take leases under it. It fixes the ancient rent, when compounded for, as a rent-charge, and prevents the Duchy from ever raising it again, and declares, *that all leases otherwise granted shall be null and void.*

1st JAMES II.—A. D. 1685.

This Act is also a re-echo of 22nd Charles II., where in like manner, the legislature recognises the exercise of this right of renewal, by the tenants *desiring their leases to be renewed*—the increasing the ancient rent—the complaint made by the tenants—the remedy provided, the lands being recognised as the property of the tenants—making all leases, made and to be made, good in perpetuity against all succeeding Kings and Dukes of Cornwall, who should *at any time thereafter* have, inherit, or enjoy the Duchy, provided the leases were made within its provisions. It fixes the amount of rent after redemption, as a rent charge, prevents the Duchy from ever increasing it again; and declares that all leases and grants otherwise made or to be made *should be null and void.* This Act also provides, that the ancient or most usual rent or more,

or such rent as had been reserved and paid for the same lands for the greater part of twenty years next before the year 1660, should be reserved. This seems to show that the probability of the violation of the constitution by increasing the ancient rent, commenced in the time of Cromwell, and was only continued for several years after King Charles' Restoration; and the ancient rent after redemption is made certain, to the tenant for ever afterwards, he having paid, or rather a consideration having been exacted from him, for its restoration. Now, supposing a tenant paid £250., as a consideration for the redemption of his increased rent back to his ancient rent, and the life for which he held this property dropped the next day, or if he effected this redemption just at the end of his term of 31 years; what was then to recompense him but the tenant right of renewal? Would any man be fool enough to pay a consideration (or, I should rather call it, an exaction, according to the spirit and necessity of the times) for the redemption of his just rights, without a certainty of his enjoying those rights? It is probable, that when this ancient rent was increased, less fines were taken; and that, in such case, in common justice, the Duchy were entitled to that consideration; and it is probable, the Lords of the Treasury increased the ancient rent in error at the time they increased the Crown rents.

The work of building on and improving this property by the tenants seems to have been in great part effected at this period, 1685, sixty-three years having elapsed from the commencement of the original constitution; and, therefore, a longer time of seven years was now for the first time allowed to those adventurers and speculative men, who had capital to invest, to come in and take leases under the constitution. And it is to be remarked, that by this Act all leases are made good, which were made *in the time* of Charles II., that is, during the Usurpation of Cromwell; therefore, there can be no doubt but leases were granted and renewed during the Common Wealth,

but it was necessary for the protection of the tenants' interest, that even those leases should be made good and confirmed; because, before such making good and confirmation, the tenant's title was as it were in abeyance, and his title without it, was rendered questionable, which prevented him borrowing money on the credit of it, so as to go on with the building on and improving, or otherwise making use of it, for the benefit of his family.

Add to this, that without such confirmation, all the renewals of a lease originally voidable for want of a legal person to grant it, could not be legalised without such interference of Parliament, and making good. It will easily be seen by this, how watchful and careful the Parliament, who are the parents of the constitution, and the guardians of the tenants' rights and interests under it, have at all times been in protecting the tenant's title, and in giving every degree of confidence and facility to the tenants, in order to encourage them to acts of improvement, and without which it is quite clear that the machinery of the constitution must have been stopped, and all further improvements frustrated.

5th & 6th WILLIAM and MARY, 1692.

This Act is likewise a re-echo of the 22nd Charles II. and is for the confirmation of leases and grants already made, but there are no words in the body of this or any of the other Acts enabling any leases to be made, although the title thereof runs so, (and whoever wishes to get a knowledge of this constitution, must consider this point well). It recognizes the tenants' exercise of their right of renewal by *desiring their leases to be renewed.* It recites, that for several years following the happy Restoration of His Majesty King Charles the Second, divers increased rents were reserved for the improvement of that revenue, *whereof the tenants complained;* for remedying which complaint, and to the end the tenants might be encouraged to renew *their leases and estates;* and thereby be the

better enabled to repair *their* houses and provide for *their* families, and improve *their* lands, holden of the said Duchy, it enacts, " that all leases made by King Charles II., by the late King James, or by their present Majesties, or to be made within seven years, should be good and effectual in law against all succeeding Kings and Dukes of Cornwall, who should *at any time thereafter* have, inherit, or enjoy the Duchy, provided they are not made for more than thirty-one years, or three lives ; *i. e.*, at one time." The habendum in all the leases is to hold for the term *and time,* a very unusual expression, shewing it was a lease for that time only, and renewable, if the provisions of the Act were complied with ; so that, if those provisions were complied with, the leases were to be good in perpetuity against all persons who should *at any time thereafter* inherit the Duchy ; and they were the machinery of the Acts, to carry the intention of the legislature into effect, the end and design being to give perpetual estates to the tenants. There is in this Act the same saving clause, and the same power of redemption of the increased rent, back to the ancient rent, which is afterwards made a perpetual rent-charge, by which the Duchy are for ever debarred from raising it again ; and the same barrier is continued, stating that all leases otherwise made should be null and void.

It will be seen by this Act, that leases made for 31 years, or under, or for one life only, in the year 1660, are confirmed and made good in the year 1692, thirty-two years afterwards. Now, unless they had been renewable leases, how could they be confirmed and made good, or need such confirmation, after they otherwise must have expired, in case they had not been renewable, and unless the tenant had had a perpetual renewable interest in them. This speaks for itself, and cannot be controverted. But the next Act carries this point still further, and makes the right of renewal still more clear. Why was it necessary to confirm and make good, leases made by Charles II. ? the reason is obvious, the original

constitution had been unjustly violated—increased rents were reserved in lieu of the ancient rents prescribed by the original Act, which rendered the leases having the increased rent, and, consequently, not made agreeably to the original provisions of the constitution, liable to be esteemed invalid under the same; and, of course, no renewals in reversion of any original lease thus granted could be good,—thus rendering the tenant's title objectionable, and preventing him raising money on security thereof—and this is the reason why Parliament, on behalf of the tenants, confirmed those leases by special enactment, and, of course, made all renewals thereof good likewise; and thus the tenant's title being made such as he could make use of, he was enabled to borrow money on security thereof, and go on building and improving; but in the Act which follows, it will be observed that this principle is carried still further, and as far as was necessary.

But what is most striking in this Act, is the Parliament exercising their authority over the officers of the Duchy in behalf of the tenants; for in this Act of 5th and 6th William and Mary there is a recital, that the fees charged by the Duchy officers for renewing the leases of small properties in Cornwall were so excessive, that the tenants were discouraged from *renewing so often as otherwise they would do:* this expression clearly shews that the tenants had the power to renew whenever they chose or desired the same; and it seems by entries on the Journals of the House of Commons, that the Lords made an amendment to this Bill, proposing to allow the officers £20 for fees where the fine to be taken for renewals was only £40, to which the Commons objected:—"First, Because the establishing so great fees would be a discouragement to the tenants, hinder them from renewing, and disable them from paying so great fines as otherwise they might do, to the lessening of *their Majesty's revenue;** whereof the Com-

* This shows the fines were paid into the public treasury.

mons ought to be very tender, especially at that juncture, when it was so difficult to find money *to supply the public occasions;* (this expression shews the fines belong to the public.) Secondly, Because the *Exchequer* officers (who were the only persons interested in the amendment,) when they attended the Committee of the Commons, could not shew a rule for or make out any right to the fees they demand, which are far beyond what the tenants of any other Lords pay for their leases; so that it would be a great favour if the said officers be allowed, by law, £10 for a lease and £4 for a copy—when otherwise, for aught appears, their taking half as much was not to be justified. Thirdly Because the Commons conceive this amendment would be of little or no advantage to the officers themselves; for the tenants, who are not well able or willing to pay so great fees, would, *(as of late they had done,) let their leases run out to the last;* whereas the moderating the fees, as by the Bill, would encourage them to renew, *from time to time,* on marrying their children, or as any life drops: (what can be more conclusive that the tenants possessed the right of renewal than those expressions?) Fourthly, Because the enlarging the fees, as by the amendment, is the laying a charge on the subject, which is so inherent and fundamental a right of the Commons, as they can by no means depart from." Thus the Lords and Commons were strongly opposed to each other on account of those great emoluments or fees taken by the officers of the Duchy, and the Bill was, by reason of this opposition, delayed: but after the expiration of nearly three years, the Bill was suffered to pass without further opposition from the Lords; and this Act now restrains the officers of the Duchy from taking more than £10 for the lease where the fine is £80, and £4 for a copy, under a penalty of forfeiting their fees so taken, and £20 besides, to be recovered by action.

Thus, it is acknowledged by the Legislature, in all their Acts, that the tenant had power to renew his lease whenever he might think proper—and they have always been renewed

whenever they desired the same, ever since the constitution was established; and whenever they were oppressed by the officers of the Duchy or otherwise, Parliament have always, as the guardians and protectors of the rights of the tenants, exercised their power and authority over the officers, in favour of the tenants.

12th & 13th WILLIAM III. A.D. 1700.

This is an Act also for the confirmation of leases already made, and it is a re-echo of the 22d Charles II., and of the last Act, with this addition, that all leases and grants made *in the time* of Charles II., or *in the time* of the late King James, as well as those made *by them*, and those to be made by his then present Majesty within ten years, should be good and effectual in law against the king, his heirs and successors, and all and every other person or persons that should *at any time thereafter* have, inherit, or enjoy the Duchy; thus giving the tenant a perpetual estate in his lease so long as the provisions of the Acts are complied with. Now, it will be seen that not only were all leases made good and confirmed which were granted by Charles II., but also those which were granted *in the time* of Charles II., that is, during the time that Cromwell reigned Protector over the Common Wealth; and during the fourteen years that King Charles II. was absent from the throne; so that the principle of confirming the tenants' leases is carried back as far as it was necessary to establish their titles, and to make valid their leases, and to do away every objection as to their validity; it being at all times not only to the tenant's advantage to have their titles freed from any objection, but to the advantage of the Parliament too, who stood in the nature of guardians, of the Constitution created by them, as well as guardians of the interest of the tenants, and of the public interest, (so far as the public were interested), who were, it seems, entitled to all fines arising from renewals, and which were heretofore paid into the treasury. The same

interest which the Duchy before enjoyed was provided for by the constitution, by their usual rents being reserved to them, according to the directions of the Acts, together with what other rents could be got for the very waste land which had yielded no rent before, and which rents composed the revenue of the Duchy spoken of in the Acts, they having nothing to do with the fines. This carries the confirmation of leases back to the year 1646, which must be fifty-four years after leases of thirty-one years, or under, or for one, two, or three lives, were granted. Supposing then a lease granted for the full term of thirty-one years; such lease must have expired twenty-three years before, provided there had been no right of renewal. Now if this is not sufficient to open the eyes of the Lord Chancellor to the tenant-right of renewal, I really do not know what could do it. It seems to me conclusive, that there must of necessity be such a perpetual estate in the lease as gives that right, and that once a lease always a lease, provided it be made agreeably to the provisions of the constitution.

It is evident that no fault could be attached to the tenant in those troublesome and unsettled times; because they could not get valid leases, they were obliged to get such leases as they could, depending on the faith of Parliament to make those leases good the first opportunity which presented itself, and which the Parliament have never failed to do; for it appears they have taken every opportunity they could to make good the tenant's title, to relieve him from every oppression of the officers of the Duchy, and to fix such a barrier around the constitution as they thought would effectually preserve it from further violation, by declaring that all leases made otherwise than as the constitution directed *should be null and void;* notwithstanding which, the Duchy Officers are now again violating it, and it now wants the interference of Parliament again to stop them in their oppressive career.

There was no necessity of going farther back, because the

leases which were granted before the Common Wealth were granted by King Charles I., being the very first leases which were ever granted; and those were granted in strict conformity to the constitution established by his father James I., having the ancient rent only reserved: therefore they were all good valid leases, and needed no confirmation to make them so—as did all the subsequent leases. I have said before, that leases granted by King Charles I. are good against the present King William IV.; but it is quite evident they could not be good against the present King, unless they had been renewable leases, and unless the tenant had had a perpetual estate in his lease by means of a right of renewal. And the making good by this Statute all leases made in the time of Charles II., (during the usurpation of Cromwell,) against the then present King, (William III.,) and against all others who should *at any time thereafter* inherit the Duchy; I think bears me out in this position—that any original lease granted is a good renewable lease in perpetuity. It is observable also, in this Act, that the antient rent, or more, or such rent as had been reserved for the greater part of twenty years next before 1660, was to be reserved: the leases having reference back so many years as to the rent, also shows they are renewable leases.

This Act also holds out the constitution to new adventurers for seven years longer, in order still to induce others to come in under it, and so progressively to get all the Duchy lands throughout the kingdom built upon and improved, and brought into a state of cultivation according to the design of the Legislature. The more it was improved the more rents would be payable to the Duchy, and the more fines on renewals would go into the public treasury, and thus all the purposes of the Act are fulfilled, *i. e.* security of title to the tenant, in the first place of necessity, for without this the intention of Parliament could never have been brought into action; secondly, security and advantage to the Duchy, by securing to it not only all the rents they were in receipt of before the constitution, but such

rents as could be obtained under the provisions of the Act for waste lands that had never yielded them any rent before; and thirdly, advantage to the public by the fines taken on renewals, from time to time, being paid into the public treasury as monies coming from the public, produced by their own outlay of capital in the building upon and improving those lands which otherwise must have lain barren; for it must be remembered, that the Duchy never have contributed one single penny towards the improvements made, and therefore it must have been considered those fines were at the disposal of Parliament, who caused them to be paid into the public treasury, to be applied to the public services of the state, and to whom they now properly belong.

6th ANNE, 1707.

This Act is also a re-echo of the 22d Charles II. in all respects, and there is nothing new to be observed upon it. It holds out the constitution as a boon to all willing to invest their capital in building and improving for another seven years.

12th ANNE, 1713.

This is an Act to continue the last for another seven years, and is also a re-echo of the 22d Charles II. It provides that the leases shall be good, reserving the ancient rent or more, or such rent as had been reserved, yielded, or paid for in greater part of twenty years next before the year 1660. This carries it back upwards of seventy years, confining the rent to such a time, so as to shut out and effectually prevent any more increased rents, and shews the words "or more" were continued in the Acts not for the purpose of enabling the Duchy to reserve more than the usual rent, but in order to give validity to those leases which had more than the usual rent reserved by the violation complained of, and for which the tenant may not have compounded. This having reference back for seventy years, shews it was a constitution under which the

tenant held his estate. If it had not been so, the Duchy would have had a right to have reserved what rent they chose.

The reserved rents compose all the revenue to which the Duchy are entitled under the Acts, the public being entitled to the revenue arising by fines to be taken for renewals, as coming from the public, produced by their outlay of capital aud industry, towards which the Duchy never contributed one single penny. Their interest was sufficiently protected and secured to them by the Acts providing for them, not only the old rents, but such additional rents as could be obtained from the very waste lands which had never yielded any rent before; thus the Duchy were placed in a much better situation than they were at the time the property was given up to the public, (it being of little value to them, and never likely to be improved under the old constitution or Charter of Edward III.) for the purpose of their improving it, by making investments of their capital in building upon it, &c.

It seems that originally all fines taken upon renewals of the leases were part of the public revenue, and paid into the treasury, to be applied to the service of the state, which were "to the great advantage of the public," as is stated in the 13th and 14th Charles II.; and which again appears, by the entry on the Journals of the House of Commons in the reign of 5th and 6th William and Mary, where it is said, "the great fees taken by the officers of the Duchy discouraged the tenants, hindered them from renewing, and disabled them from paying so great fines as otherwise they might have done, to the lessening their Majesty's revenue; whereof the Commons ought to be very tender, especially at that juncture, when it was so difficult to find money *to supply the public occasions.*"

This, I think, completely bears me out in my view in this respect; the fines on renewal were intended to be applied, and were applied to the service of the public, until the officers of the Duchy, by the neglect or oversight of Parliament,

got them into ther own hands; and therefore this is a matter for the serious enquiry of the present Parliament, up to what time the fines were so applied to the public service, and from that period the Duchy will be indebted to the public for the fines they may have received and applied to their own use, and they ought to be accountable for the same to Government or the Receiver-General of the taxes. They have a Receiver-General of their own but whose authority extends no farther than to receive the rents only which are reserved and payable to them under the Acts, as it appears to me. When the Duchy increased the ancient rents for the improvement of their own revenue, (arising from rents) the Parliament, on complaint of the tenants, interposed their authority, and caused the evil to be remedied. The more rent the Duchy could get from the tenants, the less fine they could afford to pay—so that the interest of the Duchy and that of the public were at variance; and therefore it was not only to secure the tenant in the constitutional enjoyment of his property, and agreeably to the terms of the constitution, but for the purpose of protecting the interest of the public, that the Parliament interfered.

But to whomsoever the fines belong, it makes not a shadow of difference to the tenant's right of renewal; it only shews, that if the Duchy have no right to the fines on renewal, they can have no right to demand a fine of £72,000, or even any fine all, for the purpose of giving them a pretext to seise on the rights of the tenants; and if the Parliament has so far controul over the Duchy and its officers, and over the property also, as that it may, at any time, even alter the limitation of the Duchy, and re-limit it to the younger children of the King, or otherwise, and restrain the officers from increasing the rents and from taking exorbitant fees, all of which I have fully proved; then I contend, by parity of reasoning, that it has just the same power and authority to restrain the officers of the Duchy from taking exorbitant fines; because the officers of the Duchy are only servants to the public in this respect, and are accountable

to the public for their receipts of those fines, which they have nothing more to do with afterwards than to pay them into the public treasury, in the same way as taxes levied on the subject.

The fines on the first granting of the leases by Prince Charles, were what was some years before contemplated by Parliament to be given to him upon the establishment of the constitution.

10th GEORGE II.—24th GEORGE II., 1760.

These Acts, are in effect, the same as the Act of 21st James I., and are, as it were, a re-enactment of the original constitution; but there having been so many years elapsed since the 12th Anne, 1710, the time the last Act was passed; and it having been usual for leases to be granted in the intermediate time, after the expiration of the seven years allowed for granting leases, (without the authority of any Act), which leases were always made good retrospectively by the next Act which passed, the minds of the tenants became unquiet under those voidable leases; for until they were made good by a subsequent Act, they could make no use of them for the purpose of borrowing money wherewith to repair and improve their houses and lands; Parliament, therefore, as was its duty towards them, and in order to give them every satisfaction and security of title, and, as it is said in this Act, 24th George III., 1750, "For obviating any doubt, and for the *ease and quiet of the minds of such persons as have taken, or shall hereafter take, leases from his said Majesty, and to the end that such persons may be sure to have good and indefeasible estates, and be encouraged to lay out monies in building and repairing, or otherwise improving the several lands or tenements to them demised or to be demised,*" enacts, that all leases and grants made and to be made within seven years, should be good and effectual in law against the King, his heirs and successors, and against all and every other person or persons that should, *at*

any time thereafter, have, inherit, or enjoy the Duchy by force of any Act of Parliament, or other limitation whatsoever, provided such leases and grants were not made for more than one, two, or three lives, or for thirty-one years or under, or for some term of years determinable upon one, two, or three lives; and if such leases or grants were made in reversion or expectancy; that then the same, together with the *estates* in possession, did not exceed those terms; and provided the same rents were reserved, as in former Acts:—*but it does not confine the rents to be reserved, payable to the Duchy, as in the original constitution* established for the mutual benefit of the Duchy, the tenants, and the public: in all other respects this Act is the same as the original and the subsequent Acts. It provides that all leases or grants otherwise made or to be made, *should be null and void*, but says nothing about the increased rents being brought back to the ancient rent.

This Act might be considered the first attempt to get the Duchy lands into the hands of the Crown, for it recites that "his Majesty stands seised of the Duchy of Cornwall and the possession thereof." Now it may be true that, according to the limitation contained in the charter of Edward III., when there is no Duke, the fee is cast on the King; but for the purpose that the possessions of the Duchy should be retained or kept for the benefit of the succeeding Duke, according to the terms of the charter; therefore his Majesty could not be said to be seised in his own right, but as a trustee only. The omission in the proviso of this Act to reserve the rents as usual, due and payable to him or her that shall have the inheritance or other estate of the said Duchy, according to the direction of the 21st James, and the same having been omitted in all the subsequent Acts to the present time, and from this period the rent being reserved payable to the King and his successors, instead of (as usual) to the Duchy, shews the intention of the officers again to violate the original constitution; but it leads me to the following observation:—that however the Parliament

to the public for their receipts of those fines, which they have nothing more to do with afterwards than to pay them into the public treasury, in the same way as taxes levied on the subject.

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These Acts, are in effect, the same as the Act of 21st James I., and are, as it were, a re-enactment of the original constitution; but there having been so many years elapsed since the 12th Anne, 1710, the time the last Act was passed; and it having been usual for leases to be granted in the intermediate time, after the expiration of the seven years allowed for granting leases, (without the authority of any Act), which leases were always made good retrospectively by the next Act which passed, the minds of the tenants became unquiet under those voidable leases; for until they were made good by a subsequent Act, they could make no use of them for the purpose of borrowing money wherewith to repair and improve their houses and lands; Parliament, therefore, as was its duty towards them, and in order to give them every satisfaction and security of title, and, as it is said in this Act, 24th George III., 1750, "For obviating any doubt, and for the *ease and quiet of the minds of such persons as have taken, or shall hereafter take, leases from his said Majesty, and to the end that such persons may be sure to have good and indefeasible estates, and be encouraged to lay out monies in building and repairing, or otherwise improving the several lands or tenements to them demised or to be demised,*" enacts, that all leases and grants made and to be made within seven years, should be good and effectual in law against the King, his heirs and successors, and against all and every other person or persons that should, *at*

any time thereafter, have, inherit, or enjoy the Duchy by force of any Act of Parliament, or other limitation whatsoever, provided such leases and grants were not made for more than one, two, or three lives, or for thirty-one years or under, or for some term of years determinable upon one, two, or three lives; and if such leases or grants were made in reversion or expectancy; that then the same, together with the *estates* in possession, did not exceed those terms; and provided the same rents were reserved, as in former Acts :—*but it does not confine the rents to be reserved, payable to the Duchy, as in the original constitution* established for the mutual benefit of the Duchy, the tenants, and the public: in all other respects this Act is the same as the original and the subsequent Acts. It provides that all leases or grants otherwise made or to be made, *should be null and void*, but says nothing about the increased rents being brought back to the ancient rent.

This Act might be considered the first attempt to get the Duchy lands into the hands of the Crown, for it recites that "his Majesty stands seised of the Duchy of Cornwall and the possession thereof." Now it may be true that, according to the limitation contained in the charter of Edward III., when there is no Duke, the fee is cast on the King; but for the purpose that the possessions of the Duchy should be retained or kept for the benefit of the succeeding Duke, according to the terms of the charter; therefore his Majesty could not be said to be seised in his own right, but as a trustee only. The omission in the proviso of this Act to reserve the rents as usual, due and payable to him or her that shall have the inheritance or other estate of the said Duchy, according to the direction of the 21st James, and the same having been omitted in all the subsequent Acts to the present time, and from this period the rent being reserved payable to the King and his successors, instead of (as usual) to the Duchy, shews the intention of the officers again to violate the original constitution; but it leads me to the following observation :—that however the Parliament

might have disposed of the possessions of the Duchy, even if they had passed an Act to limit the possessions of the Duchy to the King and his heirs, all must be done subject to the estate and interest of the tenant. I cannot, however, find any such Act of Parliament;—and without it I think the seisin cannot be legally vested in the King in his own right, but only as trustee. The leases have always strictly adhered to the form of the reservation, up to the period from which the officers of the Duchy have been endeavouring to get this property into the exclusive hands of the Crown—for of late I have observed that the reservation has not been so strictly complied with as it ought to have been, according to the terms of the original constitution; but to whomsoever the rents may have been reserved, since this attempt to get the property into the hands of the Crown, it cannot and ought not to affect the tenant's just and vested rights and interests in the estate; and it will be the duty of Parliament to protect the tenants in the full and fair enjoyment of their estates—and whenever and wherever the constitution is violated by any act of the officers of the Duchy, or by their own acts, to redress the grievance and restore the constitution to its original establishment or foundation, as it formerly has done.

It is Parliament that has the full controul over this property; they are the guardians of the tenants' rights and interests, as well as the guardians of the public, as regards the fines to be taken on renewals, and it is their duty to see that they are paid into the public treasury to be applied to the service of the State, as money coming from the outlay and industry of the public,—the interest of the Duchy being provided for by the Acts, directing that all rents should be reserved to him or her who had the inheritance of the Duchy; and those rents seem to me to form the whole of the revenue to which the Duchy are legally entitled according to the constitution, and which places the Duchy in a much better situation than they were prior to the 21st James, because they not only get their usual rents, which

they before received, but also rents for lands which, before the establishment of the constitution, yielded no rent at all. The fines on renewal being produced from the outlay and industry of the tenants, (who are part of the public) form part of the public revenue, and were, as it appears, formerly paid into the public treasury before they were abstracted and applied to the Duchy purposes. This is a subject to be inquired into by Parliament. This Act holds out the constitution for seven years longer, in order to induce others to come in under it, so that every part and parcel of the Duchy lands should ultimately be brought into cultivation under the same constitution.

33rd GEORGE II., 1759.

This Act is, word for word, the same as the last, and therefore no new observation arises on it. It holds out the constitution for another seven years. There are the same words, "*And to the end that such persons may be sure to have good and indefeasible estates, and be encouraged to lay out money in building and repairing, or otherwise improving the several lands and tenements to them demised or to be demised.*"

1st GEORGE III., 1760.

This Act is also, word for word, like the two last. No other observation is necessary than that it holds out the constitution for another seven years, in order to encourage other speculators and adventurers, and those who had money to invest, to come in under it; it being an investment for capital held out, from time to time, to those who had capital to invest, particularly to those who were fond of agricultural pursuits; and the terms were so far advantageous, that the tenants were to have a vested interest in perpetuity, to encourage them to become members of the constitution, and to embark their capital under its provisions, exactly the same as in other grants of land in any of his Majesty's possessions abroad, where adventurers and speculators go to settle themselves and families.

8th GEORGE III. 1767.

This is an Act made during the minority of the Prince of Wales; and it recites that he then stood seised of the Duchy, and that it was necessary to enable his Majesty to make leases, but all that it does is the same as all the preceding Acts did, by making all leases made and to be made within seven years then next ensuing good against the King, his heirs and successors, the Prince, and all other person or persons who should *at any time thereafter* have, inherit, or enjoy the Duchy by force of any Act of Parliament or other limitation whatsoever, provided the leases were made within the provisions of the original constitution; and declares that all leases made otherwise *should be null and void.* There are none of the Acts of the constitution which enable any leases at all to be made; they only define what leases should be good in perpetuity *after they are made.*

16th GEORGE III.

We now come to the Act under which the late Sir William Clayton's father took his letters-patent or lease, which was likewise passed during the minority of the Prince of Wales, and which is word for word the same as the last Act. It makes all leases made or to be made within seven years, good against all persons who should *at any time thereafter* inherit the Duchy, provided they were made under the provisions of the constitution, *i. e.* for thirty-one years or under, or for one, two, or three lives, or some term determinable on one, two, or three lives; and provides that all leases otherwise made and to be made *shall be null and void.* This barrier the Duchy officers have now contrived to take away, by procuring Acts to be passed in direct violation of the original constitution and against all the subsequent Acts passed for its amendment and confirmation, in order to get the property out of the hands of the tenants into their own hands, after every encouragement has been given to the tenants to settle themselves and their families on

this property; and notwithstanding the constitution thus established, and all that has been done by Parliament in support of it, and to encourage the tenants to outlay their capital in building and improving the lands, the Duchy officers have now taken it into their heads that they have a right to take it all away from the tenants to the ruin of many thousands of families. And Parliament not being aware of the constitution, as established by 21st James, have suffered them to do as they pleased, and (as it seems clear to me) have been legislating on the property of the tenants of the Duchy, without giving them the slightest notice.

Such, then, was the nature of the tenure and constitution under which all the tenants of the Duchy hold their land, and under which the Clayton family held and enjoyed an estate at Kennington, under the Duchy, for a period of 170 years, or thereabouts, at a certain rent of £16. 10*s*. 9*d*., and a certain fine, calculated at one and a half year's rent, received by them from their under lessees; and which they held and enjoyed by means of a lease for thirty-one years, under this Act, made strictly within the rules of the constitution, and which was renewed to them as often as they desired the same to be renewed, without any objection or hesitation whatsoever; and this holding continued down to the year 1776. The land being near London, on the Surrey side, was converted into garden ground, and occupied for nursery and horticultural purposes; but (from its contiguity to London) it being suggested that it might be let out for building purposes, Sir William Clayton's father applied to the Lords of the Treasury to exchange the thirty-one years' lease for one of another description under the Acts, namely, a ninety-nine years, determinable on three lives, which was more applicable for the purpose of enabling him to grant the usual leases to builders; and the Duchy readily granted it by letters patent, and charged the fine, as usual, on one and a half year's rent, then received from the under lessees, which amounted to £468,

the rent being £326. Those letters patent were granted in 1777 to the trustee under the marriage settlement of Sir William Clayton, to the uses contained in such settlement, which were indefinite; and there is no covenant to compel Sir William Clayton or his father to build, or lay a single brick or stone on the estate; all was left to his option whether he would build or not, and this shews that the Duchy, even at this time, had no power over the property, or why did not they then think of taking it into their own hands? It would have been charitable in them so to have done, if they had had power, rather than lie by and see the land covered with building, and then seize upon it; but they knew they possessed no such power at this time. The interests under the old leases were bought up by Sir William Clayton, and new under-leases were granted to the builders of terms mostly for sixty-five years, the usual building term, reserving ground-rents, which amount together to £1258 a year; and the lands, which consisted of about eighty-six acres, are now all covered with building. The lives co-existed upwards of fifty years, the first of which dropped in 1828, upon which the late Sir William Clayton applied to Duchy for a renewal—when, instead of assessing the fine, as usual, on the income he received from the estate, which would have amounted to about £1800, they fixed, the fine at £72,000, calculating it on the rack-rent value of the property in the hands of the Commissioners, over which he had no controul; and that at three years instead of a year and a half, (the rack-rent being estimated at about £23,000 per annum.) Sir William Clayton had laid out upwards of £6000 in draining the land and making it fit for building purposes: and covenanted with the builders to renew with the Duchy as often as a life dropped, and grant them fresh leases, so as to carry them through their respective building terms. Thus was he deprived of the means of renewal from this exorbitant fine, which was asked for the purpose of putting it out of his power to renew it, depriving him of his estate and interest in the premises, the Duchy

untruly alleging that renewals were only a matter of courtesy, and not of right. Remonstrances with the Duchy, Petitions to the King, Petition of Right, were all had recourse to, but all to no purpose. A Bill in Chancery was filed for an injunction, and the case was argued before the Lord Chancellor, who refused the injunction—and we are now driven to seek our redress in Parliament, the proper and usual tribunal in such cases. I shall presently give the arguments of the Lord Chancellor, with my observations thereon, by way of refuting them; but I will first give the three last Acts of Parliament, which the Duchy officers have contrived to get passed, in direct violation of the constitution, as established by the 21st James I., and continued, amended, and confirmed by the subsequent Acts, down to the 16th George III., which is the first of these illegal Acts, as I call them.

33d GEORGE III., 1792.

This is an Act procured to be passed by the officers of the Duchy, in direct violation of the constitution, as established by the 21st James; and of all Acts passed for its amendment, protection, and confirmation, (which make all leases null and void which are made contrary thereto); and in order to deprive the tenants of their just and vested interests in their estates. It first of all conjures up the old doubt, which had been settled and avoided 170 years before, and over which a new constitution had been erected and established by the 21st James, in 1622, and has the same preamble as is contained in that Act; and, as if the constitution wanted to be re-established, and, the officers of the Duchy had a power to reconstruct another constitution, doing away the effect of the one established; the very words of the preamble of the Act establishing the original constitution are made use of, which are not to be found in any intermediate Act. This was done in order to make it appear that all the property was in the Prince of Wales, and not in the tenants as a vested interest; when, at the same time, it is

evident that each has a limited interest; the interest of the Duchy extending no farther than the receipt of their rents secured to them by the constitution, which is all they have to do with the estate, and the interest of the tenants being a vested interest, in consideration of the outlay of their capital and of the fines on renewal, payable by them from time to time. After reciting, "that the Prince then stood seised of the Duchy of Cornwall* and the possession thereof of an estate of inheritance under a special form of limitation, differing from the ordinary rules of inheritance at common law, whereupon some question may grow, what estates in the same the Prince might legally grant, and whether leases and grants made by him would be good longer than his life; for avoiding of which doubt (which had been avoided 170 years before) it says, "And for the ease and quiet of the minds of such persons as have taken or thereafter should take lease or grants from the Prince; *and to the end that such persons may be sure to have good and indefeasible estates, and be encouraged to lay out monies in building and repairing, or otherwise improving the several lands and tenements to them demised or granted, and to be demised or granted,*" it enacts, that "all leases made or to be made by his Royal Highness should be good against all persons who might inherit or succeed to the Duchy, according to the said limitation," studiously omitting the words "*at any time thereafter*", knowing those words carried perpetuity with them, and omitting the words, by "virtue of any Act of Parliament or other limitation whatsoever," carrying the idea of perpetuity still further: and it provides that the leases should be made under the same rules and regulations as are contained in the original statute of 21st James—and that the rents should be reserved and payable to such who

* Seised of the fee only whilst the tenant had a vested interest in the land.

had the inheritance or other estate of the Duchy, which latter condition had been omitted in several of the preceding Acts; and it studiously omits that part of the Acts which say that leases otherwise made *shall be null and void;* and instead of which, it introduces one of the most inconsistent recitals that ever could be thought of; for, after the constitution had worked so well, in getting all the lands of the Duchy built upon and improved, and which only had been the means of enriching their revenue, and had been of so much benefit to the public, it gives the lie, as it were, to former Acts and to the real facts of the case; for what does this Act do, in order and with a view to make it appear that the estate and interest given to the tenant by the former Acts was not a sufficient interest, (meaning not a renewable interest;) and that the tenants had no other estate in the lands, or in the lease, than what was expressed in the lease. They contrive to put in this recital:—"And whereas various applications had been made to his Royal Highness, as well by the tenants of the Duchy as by other persons, for grants of *certain parts* of the Duchy, for such term of years as would enable the lessees to erect substantial buildings thereon, and to improve the waste lands of the said Duchy, which, it was alleged, could not be undertaken by the lessees *unless they were secured by a longer interest in the premises than thirty-one years, or a term of years determinable upon three lives.*" It then enacts, "that it *should be lawful for his Royal Highness, and he was thereby empowered,** to make leases of *any lands,*† tenements, or hereditaments, parcel of the possession of the Duchy, or annexed to the same, for any term of years not exceeding *ninety-nine years,*‡ [this is contrary to the original constitution] *expressly for the purpose* of improving the same, by erecting

* There are no such words, and of course no such power, in any of the former Acts.

† Of course it is meant to include any in lease or out of lease.

‡ In direct violation of all former Acts.

buildings thereon; or for the purpose of improving the waste lands by cultivation or otherwise; provided that, upon all such leases or grants so to be made, *improved annual ground rents* [this is contrary to the original constitution] be required and made payable to his Royal Highness, or to such as should have the inheritance or other estate of the said Duchy; and in all such cases, leases or grants so to be made for terms exceeding thirty-one years, or, exceeding the usual term, determinable upon three lives, no fines, or other considerations, should be taken by his Royal Highness, further or other than such improved annual ground-rents.

It seems the Duchy officers were envious, instead of being grateful, at the success Sir William Clayton had had in getting his estate covered with building, and got this Act passed, ultimately with a view to deprive him of it.

Now it appears to me, that this Act is a direct violation of the original constitution, as established by 21st James, and the subsequent Acts, which declare that all leases made, or to be made, otherwise than for thirty-one years or under, or for one, two, or three lives, or for some term determinable upon one, two, or three lives, and having the ancient rent reserved, or such other rent as had been reserved for the greater part of twenty years, *should be null and void.* This barrier, which was placed round the constitution by the 22nd Charles II. and every subsequent Act, is altogether taken away by this and the two subsequent Acts, which is a direct and a most daring violation of the constitution and of the tenants just rights and interets.

It was procured to be passed for the purpose (as it appears to me) of making it appear that the interest which the tenants before had, was *not* a sufficient interest to encourage them to build upon and otherwise improve the property, when it so manifestly appears, even by the 13th and 14th Charles II., that it *had been sufficient;* and that the tenants, having had fixed estates by means of such leases, had been encouraged to improve and manure the lands, and had improved the same, and

thereon laid out great sums of money, *to the great advantage of the public:* how then could the officers of the Duchy have the audacity to introduce a recital, in which there is not a word of truth. Yet so it is, that this Act has been got passed, because it is evident that Parliament, from lapse of time, and some of the tenants also, had lost sight of the constitution; which is no wonder, as the old Acts of 21st James and of Charles I. do not appear in the modern editions of the statutes; and I should rather think that there are now many Members of Parliament who never knew or heard any thing of a constitution being established for the government of the Duchy lands, prior to reading this history of it.

The Parliament have a controlling power over this property, and might alter the limitation of it if they thought proper so to do, and limit it otherwise than as it at present stands limited, subject, nevertheless, to the interest of the tenants under it, which, in such case, is taken care of by the Acts, (because all leases are declared good against all persons who might inherit under any such new limitation;) and I think nothing can shew the intention of the Legislature, of giving the tenants a perpetuity of interest, more than this circumstance of preventing the interest of the tenants from being defeated under any such new limitation. However, there is in this Act the same saving clause, as in all others, *i. e.* saving to all persons, their heirs, executors, administrators and assigns, (other than his Majesty, his heirs and successors—and other than the Prince or his heirs—and all and every person and persons who should *thereafter* have, inherit, or enjoy the Duchy of Cornwall, by force of any Act of Parliament or other limitation whatsoever) all such rights, titles, estates, customs, interests, *tenures*, terms, claims and demands whatsoever, in the lands, as they *had, or ought to have had*, before the making of this Act.

It seems that, by virtue of this saving clause, the rights and interest of the lessees under the Duchy, or, I would say, the

lessees under the constitution, were saved. But it will be seen that the Duchy officers have actually shut out their own lessees in the two next Acts with themselves, and wherein they aim a finishing stroke or death-blow at the constitution.

4th GEORGE IV. and 1st & 2nd WILLIAM IV.

Both of these Acts are alike, verbatim. The latter recites, that "His Majesty then stood seised, and that some doubts might arise in relation to his Majesty's making leases, for obviating which, and for the ease and quiet of the minds of each person as had taken, or should thereafter take, leases from his Majesty, and to the end that such persons might be sure to have good and indefeasible estates, and be encouraged to lay out monies in building and repairing, or otherwise improving the several lands and tenements to them demised or to be demised;" it enacts, "That during such time as the said Duchy of Cornwall should remain vested in his Majesty, it should be lawful for his Majesty from time to time, by warrant under his sign manual, to be countersigned by any three or more of the Commissioners of his Majesty's Treasury, to authorise the regular officers of the Duchy, who, by virtue of their several appointments and offices, were concerned in the general superintendence and management of the revenue and affairs of the said Duchy, being not more than five and not less than three, to demise or lease in his Majesty's name, and on his Majesty's behalf, by deed under the hands and seals of any two or more of them, all and every the manors, messuages, parks, tenements, lands and hereditaments, parcels of the possession of the said Duchy of Cornwall, or annexed to the same, and provided the lessees should execute counterparts of such leases so to be made. And also to appoint stewards, commissioners for assessing the ancient Duchy lands and tenements, and other officers during his Majesty's pleasure; and also pass the accounts of all receivers, bailiffs and collectors, accounting for its revenues. And all such leases and grants so made or to be

made, by virtue of such warrant, should be good in law according to the purport and contents thereof, against the King, his heirs and successors, and all other persons that should *at any time thereafter* have, inherit, or enjoy the said Duchy."

"Provided, that every such lease should be made for three lives or fewer, or for thirty-one years or under, or some term of years determinable upon one, two, or three lives. And if made in reversion, then that the same, with the estate in possession, should not exceed those periods; not to be dispunishable of waste, and so that the antient rent, or more, or such rent as had been paid for the greater part of twenty years next before the making of the leases, should be reserved due and payable to such as had the inheritance, or other estate of the said Duchy; and where no such rent had been reserved or payable, that then upon every such lease should be reserved a reasonable rent, not being under a twentieth part of the clear yearly value of the premises contained in such lease." It so far brings the constitution forward, but with a determined view to make it null and void, and inoperative in favor of the tenants.

"It then recites (the same as the 33rd Geo. III.) that certain parts of the said Duchy were capable of considerable improvement, by the erection of substantial buildings thereon, and by the cultivation of waste lands, which could not be undertaken by the lessees, unless they were secured by a longer interest in the premises than thirty-one years, or a term of years determinable on three lives;" and enacts, "that it should be lawful for the said officers of the Duchy to be named in his Majesty's said warrant, and they were thereby empowered by deed under the hands and seals of any two of them, to demise, lease, or grant *any lands*, tenements, or hereditaments, parcel of the possessions of the Duchy of Cornwall, or annexed to the same for any term of years not exceeding ninety-nine years,*

* Was not the interest given to the tenants under the former Acts, *expressly* to encourage them to build upon and improve the lands? and dont its effect shew it was amply sufficient because of the right of renewal.

expressly for the purpose of improving the same, by erecting substantial buildings thereon; or for the purpose of improving *waste lands by cultivation*, or otherwise, provided that the lessees should execute counterparts of said leases;" and further provides, " That upon all such leases or grants *so to be made, improved annual ground rents* be reserved and made payable; and that in such cases of leases or grants so to be made for terms exceeding thirty-one years, or exceeding the usual term determinable upon three lives, no fines or other considerations be taken, further or other than the improved annual ground-rents thereby directed to be reserved as aforesaid." And in order to get all the power into their own hands, and to do just what they please with the interest of the tenants, and have them entirely at their mercy, it is provided, " that the *terms and conditions** of *all* leases and grants to be granted or made under the provisions of this Act, should be previously approved by the Commissioners of his Majesty's treasury, or any three or more of them."

This Act has the same enactment as to the covenants, being good against all those to whom the *interest* of the said leases or grants should come respectively—as all the other Acts; but the saving clause, instead of saving to all persons (other than the Duchy,) all such rights and interest as they had or might have had before the passing thereof, entirely shuts *the lessees* out; by this manœuvre the officers of the Duchy got Parliament to assist them in their intentions of seizing the property into their own hands, and effectually to give the death-blow to the constitution. The clause runs thus—

" Saving always to all and every other person and persons, bodies politic and corporate, their heirs and successors, executors, administrators, and assigns (other than his Majesty, his heirs and successors, and other than the Duke or Dukes of

* The terms and conditions are settled by the constitution, and in which the tenants are firmly fixed and have an interest, which Parliament itself cannot take away without doing violence not only to the constitution of the Duchy but to the constitution of the kingdom.

Cornwall, for the time being, and his and their heirs, *their lessees*,* and all and every other person or persons that shall hereafter have, inherit, or enjoy the said Duchy of Cornwall, by force of any Act of Parliament or other limitation whatsoever,) all such rights, titles, estates, customs, interests, tenures, terms, claims, and demands whatsoever, of what nature, kind, or quality soever, of in to or out of the said manors, offices, messuages, parks, tenements, lands or hereditaments, or any of them, parcel or annexed to the said Duchy of Cornwall, as they or any of them had or ought to have had before the making of this Act, to all intents and purposes, and in as large and ample manner and form as if this Act had never been made; this Act or any thing contained to the contrary notwithstanding." So that they have really ventured to shut their own lessees out of the benefit of the saving clause, to enable them to seize upon the Clayton property.

Now, in respect of the three last Acts (which I shall call unconstitutional Acts, because they legislate on private property, without giving notice to the parties whose vested interests are affected by it,) the consent of the tenants ought to have been obtained, as on any inclosure or other Bill affecting the rights and interests of others.

They militate against, and offer destruction to the constitution as originally established by the 21 James I. They take away the barrier which was placed around it for its protection. They are calculated to take all power out of the hands of Parliament, who have hitherto been and have acted as guardians of the tenants' rights. They appoint officers of their own choosing, for assessing the fines, (which, as I sincerely believe, do not belong to them,) in order to give them an opportunity of demanding excessive fines; putting it out of the power of the tenant to renew, and so to seize the estate of the tenants into

* This evidently shews their design of depriving all the lessees of their vested rights, but it is levelled at the Clayton family because theirs is the most valuable estate held under the constitution.

their own hands; and this after the tenants have exhausted all their capital and industry, in building upon and improving the lands; in making what was formerly waste lands, into good cultivated farms; and in some cases in entirely covering the land with buildings (as in the Clayton case.) Thus, to get possession of the tenants' vested rights, these Acts (as it seems to me) were chiefly passed.

To enable his Majesty to make building leases for ninety-nine years absolute, is a direct violation of the original constitution; and all the subsequent Acts, down to the 16th Geo. III., under which the Clayton family took their lease, made in every respect under its provision; all which Acts, from the 22nd Charles II., when the constitution underwent repair and amendment, in consequence of its having been infringed upon by the officers of the Duchy and the then Lord of the Treasury, contain a declaration, that all leases otherwise made than according to the original provisions of the constitution, *should be null and void.* Yet the Duchy officers have so contrived to get those three last Acts passed, in direct violation thereof.

They have also introduced a proviso, that the terms and conditions of the leases to be granted or made under the provisions of this their own Act (as I may call it,) should be previously approved of by the Commissioners of his Majesty's Treasury. They have shut out the Clayton family and every other lessee from the benefit of the saving clause, in order to give the finishing stroke or death-blow to the original constitution, which has lasted upwards of two centuries, and has worked so well as to have effectually answered the end and design of Parliament, who wisely established it, by giving the tenant such an interest as has been sufficient, to get all the Duchy lands throughout the kingdom, that were worth the outlay of capital, built upon and improved at the tenants' expence, to the enriching of the Duchy, and to the great advantage of the public. Yet the Duchy officers have now (it seems) discovered that such an interest is *not sufficient*, after

its having been recognised *as sufficient* by the Legislature; and in order to answer their own sinister purposes, have actually made a new Act to contradict an old one. It never can be denied, but that the tenant was to have such an estate and interest in the lands as would be sufficient for the purposes of building and improving; he has had such an estate and interest, and by means of which he has been encouraged, and has built upon and improved the property, and thereon laid out great sums of money, to the great advantage of the public; and now the Duchy are pleased to say, such an interest was not sufficient. They say a thirty-one years, or three lives absolute, was not sufficient for the purpose. How then comes it to pass that it has proved sufficient? Why, because a tenant-right of renewal was annexed to those leases, and without which the lands, according to their own shewing, would never have been improved, and would have remained still in a barren state, as Mr. Glanvylle most justly observed at the time the constitution was being made. If a thirty-one years, or three lives is *not sufficient*—and it cannot be denied but the tenant was to have such an estate *as would be sufficient*—it proves most clearly that it must be a larger estate which was intended to to be given him. Then what is the nature or description of that larger estate, but *a tenant-right of renewal?* the only true construction that can be put on the Acts, considering the situation the property was in prior to the constitution being established, and the absolute necessity there was for it.

As respects the tenure, the want of power in the Duchy of itself to give an interest to the tenants sufficient to encourage them to improve; the necessity and advantage of getting the lands built upon and improved for the good of the public; the necessity of their being given up to the public, to be got built upon and improved at their expense; the necessity of establishing a new charter or constitution for that purpose; the necessity of giving the tenants a vested interest in the property, to encourage them to do so; the necessity of providing that

such vested interest should be had and enjoyed by means of renewable leases, in order to get fines on renewal of those leases; the necessity of providing how, in what manner, and by whom those leases should be made; the necessity of Parliament becoming the guardian and protector of the constitution they had so established, and of the tenants' rights and interests under it, and to see that the tenants had their estates continued to them when and as often as they desired their leases to be renewed; and the necessity of the law being so made as that, at all times, leases should be made good; all seem clearly to shew that there must, *of necessity*, have been a tenant-right of renewal, otherwise the lands would have remained barren, and the Duchy would have remained poor. And it seems to me that they ought to be thankful for the constitution so established, which has so much enriched them and benefitted the public, and to treat the tenants under it with gratitude and respect, who have so much improved the property, and more so the Clayton family, who have been the primary cause of some parts of the land being so covered with building, that, in the course of a few years, when the leases fall into the Clayton family, they will yield fines on renewal, on the death of each life, of from £20,000 to £30,000. To whom these fines will belong, whether to the Duchy or to the public treasury, is a serious consideration for Parliament; I leave that to be settled by them. But it seems to me, that the revenue of the Duchy is confined to the rents, which alone are secured to the Duchy by the Acts. And it seems to me, that what other benefit arose from the estate by reason of this new charter or constitution, was to be applied to the public service, and was (I believe) formerly paid into the public treasury.—See the *Journal of the House of Commons*, 5th and 6th William and Mary and 12th and 13th Charles.

I now come to the Lord Chancellor's arguments on delivering his judgment, on the motion for injunction in the Clayton Kennington case.

OBSERVATIONS, by way of refuting all the LORD CHANCELLOR's Arguments which he was pleased to make use of in his Judgment in the Case of the Kennington estate, belonging to the family of the Claytons.

His Lordship, in the first place, after speaking of the tenure under which the Duchy itself was holden by the Charter of Edward III., says, "that it so happened that much, indeed most of the Duchy property, was of a kind that required the outlay of capital, as *mines in Cornwall, or building land in or near London;* and that some powers were therefore necessary to get the estates better administered, and therefore the 21st James was passed."

Now, it is quite clear that his Lordship has fallen into an error at first starting, in fixing the operation of the Acts to mines in Cornwall, and building land in or near London; for the Act of 21st James, as may be seen on reference thereto, says, "And to the end the tenants might be sure to have good "estates, and so be encouraged to bestow charges in the build-"ing and maintaining of their houses, and good *manuring* of the "lands, &c. to them demised." I should, therefore, be glad to know how his Lordship meant to dispose of the manure—or if manure can be in any manner necessary or applicable to mines in Cornwall, or building land in or near London; and if the word *manure* does not clearly shew that it was not mines in Cornwall, or building lands in or near London, which the Act contemplated, but that it was the general improvement of the surface of all the Duchy lands throughout the kingdom, and to give to the tenants such an interest as would encourage them to build farm-houses, barns, stables, and other necessary buildings, making waste lands into farms, and bringing all the unproductive lands, which had never before yielded any rent, into a

good state of husbandry and cultivation for agricultural purposes, and not for mining or building purposes.

> His Lordship then goes on to say, "that this Act of James enacts that all leases made by the Prince should be good, not for ever, nor for any right of renewal, but provided they did not exceed thirty-one years, or three lives; and declares that the tenants take no other interest than what they take under the leases."

Now, his Lordship can never have considered that the tenants do not claim or derive their title under the leases, but under the Acts—the leases being nothing more than the machinery of the Acts, and the means by which the constitution was and is to be worked; for it can be easily seen, that the main end and design of the statute of 21st James, was to do that which Mr. Glanvylle said was absolutely necessary to be done, *i. e.* to give to the tenants a perpetual estate, in order to secure improvement, and to prevent the lands from remaining barren; which could be done in no other way than by establishing a constitution for the purpose of getting all the Duchy lands throughout the kingdom (and which, for the most part, were totally waste) better administered, by getting them built upon and improved at the tenants' expense; and the way that this perpetual estate is given to the tenants is, by *establishing, ordaining,* and enacting, that all leases made and to be made, should be good against all succeeding Kings and Dukes of Cornwall, and all and every other person or persons who should *at any time thereafter* have, inherit, or enjoy the Duchy; not only by virtue of the limitations contained in the Charter of Edward III., but by force and virtue of any Act of Parliament or other limitation *whatsoever;* and by putting the constitution stamp of perpetuity on every lease made and to be made. It enabled Prince Charles, (who was a consenting party to this constitution) with the consent of the King and Parliament, to take fines, by way of consideration, for granting those

perpetual leases and estates, (the estate being the tenant-right of renewal of the same lease) and which was the benefit the Parliament had, for some few years before, in contemplation to bestow upon him by way of patent, as may be seen on reference to Cobbett's Parliamentary History, a few years before 21st James; and though the words *for ever* are not selected to convey this perpetual estate, the same is conveyed by other words, which are tantamount and sufficient to convey a perpetuity of interest to the tenant, in pursuance of and according to Mr. Glanvylle's speech in Parliament, recommending and enforcing the necessity of such a perpetual estate being given, and which may be seen on reference to the Journals of the House of Commons at this period. But as it was necessary to give the tenants a perpetuity of interest for their security; so it was as necessary (considering that fines on renewal were contemplated) to make a provision, so that the tenants should have and enjoy this fixed estate, by means of renewable leases to be made under certain rules and directions, in order to secure to the public (to whom the Duchy lands were given up) a due proportion of the benefit arising from the improvement made. Among the other rules and directions, one is, that those renewable leases should be made for thirty-one years or under, or for one, two, or three lives, at the option of the tenant, in order to make it obligatory on both parties to effect such renewals, from time to time, as occasion required, for their mutual benefit, and which was to be secured by reasonable fines, to be paid on such renewals. This seems to me to be the fair construction of the Acts; for the very mode and manner is chalked out by them—how, by whom, and under what specific directions and reservations the tenants' leases are to be thus renewed from time to time, either in possession or in reversion, and when and as often as the tenants *desired their leases to be renewed.* The exercise of this right of renewal is over and over again admitted by the Legislature itself, almost in every Act of Parliament relating to

this constitution, from the 22nd Charles II. inclusive, in the words following:—"*which leases are desired to be renewed by many of the said tenants.*" It is in vain, therefore, to contend that those leases are not renewable leases, when the exercise of that right has been thus recognized by the Legislature; but this is a point not noticed by his Lordship. It will be seen from those observations, that the 21st James is to be considered as a piece of mechanism for the establishment of a constitution, wisely contrived and concocted by Parliament to answer the purpose and design of all parties—and that the leases are only the machinery of the Acts by which the constitution is made to work; not the end and design of the Legislature, but the means only by which that end and design was to be carried into execution, and the way by which the tenants were to have and enjoy the perpetual estate so given them; for without renewals there could be no revenue to arise from fines to be taken thereon.

The Prince, the King, and the Parliament, on behalf of the public, are the acting parties to the constitution, and the tenants the recipient or passive parties thereto. The lands of the Duchy were thus given up to the public, to be administered under this constitution, upon condition that the rents theretofore paid to the Duchy, as well as the rents which could be obtained from the waste lands, which never yielded any rent before, should still be reserved to him or her who should have the inheritance or other estate of the Duchy. The first fines which Prince Charles took for granting the first leases in perpetuity under this constitution, (so established,) might be considered as the great benefit which the Parliament had had in contemplation to bestow upon him; and a full and fair consideration for his becoming a party to the constitution; and for giving up the lands to be governed by it; and a full and fair consideration for the tenants to give him for the perpetual estate, or right of renewal intended to be given them by the Act, particularly as renewal fines seem to have been contem-

plated by the Acts; for it is evident that, being subject to rents and renewal fines, nothing less than a perpetuity of interest would have afforded any encouragement for so great an outlay of capital as is required in building upon and improving waste lands. Thus, the interest of all parties were most fairly, most wisely, and most equitably provided for. And it is quite clear that this was the case; for in the saving clause in all the Acts, there are words which operate as a disclaimer—a discontinuance—an extinguishment of all future right and interest of the Duchy over this land; at the same time it saves the rights of all the tenants, their undertenants, mortgagees, and others, who had or ought to have had any interest in the same whatsoever, before the making of the Acts.

And it appears from the expression in the Act 13th and 14th Charles II., as well as from the Journals of the House of Commons, 5th and 6th William and Mary, that the fines received on renewals formed part of the public revenue, in contradistinction from the private revenue, secured to the Duchy by the Acts directing the rents only to be reserved to them—and of course those fines were applied to the public services of the State; and it is acknowledged by the 13th and 14th Charles II. that the constitution had worked so well, that the tenants having *fixed estates*, had been encouraged to improve and manure the land, and had improved the same, and therein laid out great sums of money in building and otherwise, *to the great advantage of the public;* and the Journals of the House of Commons, 5th and 6th William and Mary, express their disapprobation at the conduct of the officers of the Duchy in taking such large fees for the renewed leases of the tenants, because it discouraged them and hindered them from renewing, and disabled them from paying so great fines as otherwise they might do, to the lessening their Majesties' revenue; whereof the Commons ought to be very tender, especially at that juncture, when it was so difficult to find money to *supply the public occasions*.

For what (I would ask his Lordship) was the Prince made a party to the constitution, but forthe purposes I have here stated? For what was the recital contained in the 21st James, stating the precarious, uncertain, and changeable nature of the tenure under which the Duchy was held; and setting forth the very largest estate and interest, which by any possibility the tenant could enjoy under the old tenure from the absence of a son to inherit—(in which case a lease might be good for thirty, forty, fifty, or even sixty years)—but to shew that even this interest, from its uncertainty, offered no encouragement to a tenant. For what was this but to shew that a larger and more certain interest was necessary; and what is the effect of all this preamble, but to shew the absolute necessity which existed for the establishment of a constitution for the better administration and government of the Duchy lands. What (I would ask his Lordship again) is the preamble in all the Acts, but an absolute promise and undertaking by Parliament, to give to the tenants such a good, sure, fixed, and indefeasible estate as would be sufficient to encourage them to outlay their capital in building upon and otherwise improving the lands? What (I would ask again) is the enacting clause, but a fulfilment of that promise, by making all leases made and to be made good not only against the King or Duke, and all other persons who should *at any time thereafter* have, inherit, or enjoy the Duchy under and by virtue of the Charter of Edward III., but under or by virtue of any Act of Parliament or other limitation whatsoever? What (I would ask) is this for but to prevent the possibitity of the Acts, at any future period, being misconstrued by any attempted construction, that the leases were to be good only against the King or Duke, who, *for the time being*, or during the term granted, should inherit the fee? What were those words, *at any time thereafter*, introduced for, but for the purpose of preventing any such erroneous construction? For what were the leases made good against any persons inheriting under or by force of any

Act of Parliament or other limitation, but to prevent Parliament itself defeating the tenants' interest by any change of the limitation. What does this shew, but the absolute power the Parliament have over the property, and, of course, over all the officers of the Duchy, who are by them entrusted with the management of it? What does the saving clause in all the Acts shew, but a relinquishment, a giving up, a disclaimer and extinguishment, of all the future rights of the Duchy over the estate, whilst the rights of all others are saved? What is the effect of the provisional clause, but the describing what sort of leases shall be good leases in perpetuity, after they are made; and that if such leases are made within the provisions therein contained, that is, if they are not made for more than thirty-one years or three lives, then that they shall be good not only against all successive Kings and Dukes of Cornwall who should at any time thereafter inherit, according to the limitations contained in the Charter of Edward III., but who should at any time thereafter inherit by virtue of any Act of Parliament, or other limitation whatsoever? What is the effect of the provision clause, in another respect, but providing, for the security of the Duchy, the reservation of the rents usually paid, together with all other rents which might be obtained from lands which never before were brought into cultivation, according to the intention of the parties, and in lieu of and satisfaction for all the Duchy's rights and interests in and over the land, in the same manner as an allotment is made by the award of the Commissioners upon any inclosure? What (I would ask again) is the meaning of the 1st Charles I., that he, when Prince, had bargained and contracted for leases *and estates?* What were those estates for which he had so bargained and contracted, but the tenant-right of renewal of those leases, for which he had so contracted? What is meant by his being enabled, in his father's life-time, to make leases, but that the 21st James pointed out what sort of leases should be good leases under the constitution, after they were made; and it

was by that means he was enabled to make good leases; not that there were any enabling words in the Act to enable him to make any leases at all. And because he, when Prince, had received divers fines and sums of money according to such contracts, and had entered into treaty with divers others for like *estates*. It is said he was graciously pleased to fulfil his contracts. What, I would ask, did he do more than a Court of Chancery would have compelled the lessor to have done, even without the lessor's having first pocketed the money for the fines? But how did he perform the contracts so made, or how did the Parliament enable him so to do. Not by enabling him by any specific or appropriate words, but by making all leases good in perpetuity, and pointing out to him what sort and description of leases should be good leases in perpetuity, under the constitution, after they were made, and to such leases only to which the perpetuity should attach. Again, I would ask, if the 13th and 14th Charles II. does not admit that it was by means of those leases the tenants had *fixed estates*, and had been so encouraged to lay out their money, to the great advantage of the public; and if this does not prove that the leases are the machinery only by which the constitution is worked, and the means only by which the tenant is appointed by the Act to have and enjoy that good and indefeasible estate, given him against all persons who should *at any time thereafter* have and enjoy the Duchy? I would also ask, how it is that this Act speaks of estates *being well and legally renewed*, if it were not a renewable interest created by the constitution; and how it is that this Act recited that, on the like consideration, King Charles I. was, by special law, enabled to make such leases? What leases are here meant, but such leases as by reason of which the tenants were to have and enjoy that fixed and perpetual estate spoken of by Mr. Glanvylle, and given to them by the Acts preceding, in consideration of the great and heavy expense, and the large sums of money it was necessary for the tenants to lay out in the building upon,

manuring, and otherwise improving the lands? I would also ask, how a lease for thirty-one years or under, or for one, two, or three lives, could be good, according to their purport and intent, against all succeeding Kings and Dukes, and all other persons who should *at any time thereafter* have or inherit the Duchy, without their being renewable leases, and without the tenant had a perpetual interest in his lease—namely, the right of renewing it.

What, again, I would ask his Lordship, is meant by the 22nd Charles II., having those words: "*Which leases are desired to be renewed by many of the said tenants?*" What is this but a recognition by the Legislature, of the tenant's exercise of his right of renewal, and which runs through most of the subsequent Acts? What occasioned the recital in this Act, "that of late years divers increased rents had been reserved by the Duchy for the improvement of that revenue, whereof the tenants had complained;" but that it was a violation of the tenant's original right to have their leases at a certain rent, fixed by the Act establishing the constitution, which gave them a right to complain—or what right could they have to complain, unless they had had a vested interest. And though it is said the King was graciously pleased to redress it, he was only graciously pleased to do an act of justice toward the tenant, through the interference and authority of Parliament, who had the controul over the officers of the Duchy, and the Lords of the Treasury, who had unjustly violated the rights of the tenants, at a time when every arbitrary means were made use of to get money for the King's purposes, and to carry on the government. What (I would ask) was the reason why this Act of 22nd Charles II., revised and amended the constitution in no less than eight different places, but with a view to preserve the tenant's estate or interest from being any more violated or infringed upon by the arbitrary officers of the Duchy? Why did this Act begin to call and describe the property as the tenants' own respective tenements and lands, their own leases

and estates, and encourage them to repair their own houses, and provide for their own families, and to improve their own lands, holden of the said Duchy, just in the same way as copyhold tenants hold their lands of inheritance under the lord of a manor? Why are the words, *at any time hereafter*, first introduced into this Act, but to prevent the possibility of any misconstruction of the constitution, and to prevent it ever being said, that the 21st James only meant that the leases should be good against all succeeding Kings and Dukes who, *for the time being*, or during the term granted, should have or inherit the Duchy? And, above all, I should like to ask his Lordship, for what purpose this Act of 22d George II. placed a barrier around the constitution, by declaring that all leases and grants otherwise made than for thirty-one years or three lives, should be null and void, if it were not that the tenants had a perpetual right of renewal that must be protected, to afford them encouragement to go on building and improving, and effectually to prevent any further violation of the constitution, or of the tenants' vested rights and interests under it? I would also ask why the word *tenures* is here first inserted in the saving clause, if it were not to protect the tenants' tenure or constitution, under which he held the lands, and to protect it from any future violation? Again, I would ask, why the *ancient rent*, after payment of the composition for the taking off and discharging the increased rent, is for ever after fixed and charged upon that particular estate; and the Duchy for ever afterwards prevented from increasing it again? And if this does not clearly shew that the tenants have such a permanency of interest that the Duchy cannot deprive them of; and that if the tenant is possessed of an estate, of which the landlord can never raise his rent, does it not shew, of necessity, that he must have a vested interest in that estate: then what, I should like to ask his Lordship, can this vested estate and interest be, if it is not the tenant's right of renewal?

What, again, (I should like to know) is the reason that the

Act of 5th and 6th William and Mary recites, that, by reason of the great charges made by the officers of the Duchy for the leases, the tenants were discouraged from *renewing so often as otherwise they would do;* but to shew that the tenants have the power in themselves to renew, when and as often as they like? And why did the Parliament interfere in behalf of the tenants, and restrict the Duchy officers to a certain sum to be charged for the leases made or *renewed* in future, and enforced a severe penalty if they charged more; but to protect the tenants from oppression by the officers of the Duchy, and to protect the public revenue, which was entitled to the fines on renewal, and which revenue had been lessened by reason of the officers taking such large fees, the tenants could not afford to pay so large fines, inasmuch as they (the officers) wanted to charge one-half as much for their fees as they charged for the fines, and thus to injure (I don't say rob) the public revenue, which the Parliament found it their duty to protect.

Thus it will appear, that his Lordship has taken too narrow and too limited a view of the Acts, in stating that the leases are not made good for ever, and in saying that the tenant takes no further interest than what is mentioned in his lease; but in order that he might see the matter more clearly, I will just propose a case, which I trust will convince him. Suppose, then, a tenant took a lease, for his own life, of 100 acres of this waste land, which before never yielded any rent whatever to the Duchy, (of which there were many thousands of acres); but for the purpose of coming at the value of the fee-simple, we put it at 2*s.* an acre, making a rental of £10 per annum, which, multiplied by thirty years' purchase, would produce £300, the value of the fee-simple of the estate, in case the tenant had actually been a purchaser of the fee. Now, what would it cost the tenant in the outlay of his capital in building a farm-house, barns, stables, and other buildings, necessary for its occupation as a farm? This, at the lowest, would be £500. Then what would it cost the tenant per acre

to bring this land into a state of cultivation, before he could have any return of his capital? At least £10 per acre. This, together, would amount to £1,500, being five times the value of the fee-simple of the land. What then, I would ask, is to remunerate the tenant for all this outlay, but a perpetual right of renewal, and the scope left for his future industry, in order to bring up his family thereupon? Supposing, then, that as soon as this £1,500 was expended, (which, perhaps, may be all the poor man was worth, besides his wife and children), he dies, what then? Why, according to the Lord Chancellor's decision, and according as the Duchy officers have lately acted, they would have a right to seize upon the whole of the poor man's outlay, labour, and industry, and turn the poor disconsolate widow and family out of doors; and this, too, after all the Acts of Parliament had been telling him that he was to be sure to have such a good, fixed, and indefeasible estate, as would be sufficient to encourage him to outlay his capital in building upon and improving the lands. Now, according to his Lordship's decision, the Parliament of James must have been a set of pickpockets or swindlers, pretending and promising to do that which they never intended to do, and the tenants a set of fools. I will leave it to the judgment of any man of common sense, whether either were likely to be the case, or if this were a likely way to get the Duchy lands built upon and improved; and if this could ever have been the intention of the Legislature in establishing the constitution, which was established, not only for the protection and interest of the tenant, but for the purpose of securing to the Duchy, the same rents which were theretofore payable to them, together with what additional rents could be obtained for the waste lands, which had never before yielded any rent; and, ultimately, for the good of the public. I would ask if the widow, in the case just supposed, had not, at least, a well-founded equitable right of renewal, (independent of any legal right for which I contend.) The very mode and manner of such renewal is specially provided for by the Act—and which

provision could never have been necessary in case renewals had been a mere matter of courtesy, as the Duchy officers so unjustly and so vainly contend for. It could never have been intended to leave the tenant at the mercy of the Duchy officers, after the tenant had so expended his capital; for such an uncertain interest would at once have effectually checked and put an end to all improvement. On the other hand, if it had been the intention of Parliament to have enabled the Duchy to grant leases for thirty-one years or three lives, (without any benefit of renewal,) in order to get the Duchy lands built upon and improved at the tenants' expense, would not the Act have provided that proper covenants should have been inserted in the leases, (as in all other building and improving leases) compelling the tenants to build and improve: but in the present case there is no such provision in the Acts, nor is there any covenant to that effect in any of the leases; the lessees being not bound to lay a single brick or stone on the property. Nor is there any such covenant in any of the letters patent granted to the Clayton family; and although the last letters patent were exchanged from a thirty-one years' term, to a term which was more applicable for the purpose (as the Duchy well know) of getting the land built upon, the lessee was left to do as he liked—to build or not to build, at his pleasure; a proof that he takes such an interest under the constitution, as of itself would be sufficient to encourage him so to do: and as the Legislature has admitted that a thirty-one years, or three lives, is not sufficient for the purpose, it follows that it must be some larger estate and interest, originally intended and actually given to the tenant for those purposes; and I would ask what interest that can be, other than a *tenant-right of renewal*—which is that "good, sure, fixed, and indefeasible estate" spoken of in all the Acts: otherwise it would shew that the Parliament of James were as much wanting in wisdom as they have been abundant in the construction of a constitution, which has been attended with such beneficial effects, and which, in its good

working, has so enriched the Duchy, and been of such great advantage to the public. This is solely in consequence of the tenant-right of renewal being annexed to the leases; for it is quite clear from the Acts of Parliaments' own shewing, that without such right of renewal, the lands must have remained in a barren state, because they admit that a lease for thirty-one years, or three lives absolute, of itself (even if such a term had been absolutely fixed instead of being indefinite) is not a sufficient interest for the purpose.

Again—

> The Chancellor admits, that if the landlord so conducts himself towards his tenant, as to induce him to lay out his money and expend his capital in the improvement of the lands demised, and to believe that he will renew his term, the Court of Chancery will enforce such renewal, especially if the thing done by the tenant tend to the advantage of the lord. But then, his Lordship says, the Duchy have done nothing to excite the expectation, or to induce the tenants so to lay out their money.

Now the Lord Chancellor does not see the reason why the Duchy has done nothing in this respect, and I will take leave to tell him the reason; it is because the Parliament had left them nothing to do. The Parliament had done every thing to encourage and excite the tenants to an outlay of their capital; they had engaged to give the tenants indefeasible estates—and had left the Duchy nothing to do with the estates but to receive their rents, which is all the power they have reserved to them by the constitution. The tenants do not pretend to claim their titles under the leases, which are nothing more than the machinery of the Acts; and the Duchy officers are the instruments by which that machinery is to be put in motion, at the request and desire of the tenants, and by the command of Parliament, as the guardians of the tenants' rights, if they refuse. In fact, the Parliament seem to have left nothing

undone, for, in the first place, they establish a constitution in order to get the Duchy lands built upon and improved at the tenants' expense; they make choice of the very longest duration of interest the tenants could, by any possibility, (in the event of there being no son to succeed to the King or Duke) have and enjoy; in order to shew the absolute necessity which existed for the establishment of a constitution in favour of the tenants, and in order to give them such an interest as would be sufficient to encourage them to outlay their capital in building upon and otherwise improving the land. They then propose, promise, and undertake to give to the tenants such a good, fixed, and indefeasible estate and interest in the premises, as should be sufficient to encourage the tenants to outlay their monies in building upon, manuring, and otherwise improving the lands. They make all leases good leases in perpetuity against all succeeding Kings and Dukes, and all and every other person or persons who *at any time thereafter* should have, inherit, or enjoy the Duchy, not only under the limitation contained in the Charter of Edward the Third, but under or by virtue of any Act of Parliament or other limitation whatsoever; thereby protecting this perpetuity of interest from being defeated even by Parliament itself. They provide the very mode and manner in which the leases are to be renewed from time to time by the tenants—when—and as often as they should desire them to be renewed, as well in possession as in reversion. They invite and encourage the tenants to come in and renew their leases *and estates*, affording them every facility, by passing Acts from time to time, and keeping, as it were, the Court open for three years, and then for seven years together, for the purpose of giving them an opportunity of renewing their leases and estates. They treat the property as the property of the tenants: for they admit and say, that the leases are the property of the tenants; the estates, or in other words, the tenants' right of renewal, is the property of the tenants; the lands are the property of the tenants; the houses

and buildings thereon are the property of the tenants; in short, that the whole beneficial ownership of the land is the property of the tenants. They fix the rent, so as to prevent the Duchy from ever increasing it again, shewing by this the tenant had a vested interest in the land. They recognise the tenant's right of renewal, by recording in their own Acts his exercise of that right, by reciting that the tenants *desired their leases to be renewed*; they invite the tenants to come in and renew their leases and estates, in a manner as good as telling them, it was for the benefit of them and their families the constitution was established. They protect the tenants from any violation of their tenure by the Duchy officers; they amend and repair the constitution, so as to protect the interests of the tenants from violation; and, moreover, they place a barrier around it for the permanent security and protection of the tenant's interest in future; in short, there is nothing but what the Acts of Parliament have done, in order to protect and encourage the tenant to lay out his money, and to come in and renew his estate and interest, from time to time, as often as was necessary. The Duchy have nothing to do with the tenants' interest in the estate, who derive their title from Parliament and not from them. Their power is confined to the receipt and recovery of their rents directed to be still reserved to them by the Acts, for which purpose only the relation of landlord and tenant was continued. The Duchy officers are only the instruments, and the leases are only the machinery, by which the constitution is made to work, and therefore they have nothing to do with the tenants, further than receiving their rents secured to them by the Acts. This is the full extent of their power, as might be seen by reference to the Saving Clause, all other power over the estate being abandoned and disclaimed. In all cases of oppression or violation of their rights, the tenants have a right to look to Parliament for protection as the father of the constitution, as much as a child has a right to look to his natural parent for protection. And though the lands are said to be

held under the Duchy, it is because the fee rests with the Duchy, the same as the lord of a manor of a copyhold estate has the fee in him, and the tenants of the manor are said to hold their lands under the lord of that manor; and the periods allowed by the Acts for granting and renewing leases are as so many Courts held for the manor for the admission of the tenants holding under the lord. And as to what the tenants have done to the advantage of the land, the Duchy themselves must admit that it has been of the greatest advantage to them, for it has enriched and filled their coffers to the brim, and made them run over.

Again—

> The Chancellor contends, that those are leases granted under a power the same as powers given by private Acts and marriage settlements, and that the tenants take no further interest than what is contained in their leases, and that the whole of the tenant's interest is confined to what he takes under the lease; and that this case is not distinguishable from the cases where private landlords have, from motives of kindness, allowed of renewals.

Now, here lies the grand mistake of the Chancellor (whom I now call Lord Brougham, having just read that he has resigned the seals) as regards the leases. He has taken, or, I would rather say, mistaken, the means for the end and design of the Legislature; for it is quite clear that the end and design of all the Acts are to give tenants such a good, sure, fixed, and indefeasible estate, as would be sufficient to encourage them to an outlay of their capital by way of investment; the leases being the only means by which the tenants are to have and enjoy that estate, as is expressed in the 13th and 14th Chas. II. The leases are, in point of fact, nothing more than the machinery by which the constitution is made to work. And as to the leases being granted under the same power as a private Act, or powers under marriage settlements, they are not

granted under any power at all; and it seems to me his Lordship could only have read the title of the Acts, which have nothing to do with their construction. I will challenge him to shew me any words in the body of the Acts, from the 21st James down to the 16th Geo. III., (under which Sir William Clayton's Letters-patent were granted), that enable the King or Duke to make any lease at all: although the titles are an "Act "to enable his Majesty to make Leases, &c.," they do not confer any power whatever to make leases; they only enact, that all leases made and to be made shall be good in perpetuity, and then provide and declare what description of leases shall be good leases in perpetuity *after they shall have been made,* in other words, the Acts, after making all leases good in perpetuity against the Kings and Duke, and all others who shall *at any time thereafter* have, inherit, or enjoy the Duchy, point to what description of leases that perpetuity shall attach; and provide how and in what manner, and by whom, the tenant's interest is to be renewed from time to time, either in possession or reversion, as and when he should desire his lease to be renewed, and which right is recognised by all the Acts from 22d Charles II. to 16th Geo. III. (under which the Clayton family took their last and present lease, and under which they still hold the estate in law, though the Duchy have endeavoured unjustly to dispossess them.) Then as to their case being not distinguishable from leases which have been renewed from motives of kindness, I would ask his Lordship if, in any of those landlords' leases who are so kind, there are any such words as these: "And to the end that his tenant should have such a good, sure, fixed, and indefeasible estate, as would encourage him to out-lay his capital in building upon, and otherwise improving the land demised to him."—Or, if the reservation of rent in any of the leases from those kind landlords is confined to an ancient rent; or, if they do not get the best rent that can be got for the same: also if their leases are made "good against all persons who *at any time thereafter*

should inherit" their property, or who should, *for the time being only*, come to the reversion or inheritance thereof.

The present case of the tenants of the Duchy of Cornwall has no parallel in England, perhaps not in the world: it stands *entirely alone*. It has nothing to do with Bishops' leases, Corporation leases, leases from the Dukes of Portland, Bedford, or any other leases; and there is no case whatever that can bear upon it in the slightest degree; it must be entirely governed according to the plain common sense or meaning of the constitution established for the administration of the Duchy lands. There is no constitution, as regards any property belonging to the Crown, or any of the nobility in the kingdom. It can have no reference to leases granted by the Dukes of Bedford, Portland, and other Dukes, whom his Lordship has named, or by bishops or spiritual or lay corporations; there is no proposal, undertaking, or promise to give their tenants such a good and indefeasible estate as would encourage or entice their tenants to outlay their monies in building upon and improving their property. Those Duke's estates were not waste and uncultivated lands, as was the case of the Duchy lands, and as was the case of lands belonging to the Earl of Ormond, in Ireland, granted out on leases renewable for ever. Those Duke's estates required no such an interest to be given their tenants; their rents are not confined to ancient rents; their leases are not made good renewable leases in perpetuity by Act of Parliament; therefore none of these cases mentioned by his Lordship, or any other case, can have any sort of analogy to the present case of the tenants of the Duchy of Cornwall, which stands, as I have said before, entirely on the constitution established for the government of the Duchy property. It has nothing to do with customs or copyholds, as contended.

His Lordship calls on the tenants to shew by what title they claim any estate beyond their lease?

My answer is—

The tenants of the Duchy claim title under the Acts not under the leases; the very object of the Acts was to give them an indefeasible estate, such as never should be afterwards defeated by the Duchy officers, or even by Parliament itself, and which I have before shewn; and without such a permanency of interest it is quite clear the lands of the Duchy would still have remained barren.

Lord Brougham, through all his arguments, treats the Acts as giving power to the King, from time to time, to grant leases.

I say to this, that not one of the Acts, from the 21st James to 16th Geo. III., give the King or Duke any such power; all the Acts do is, to put the stamp of perpetuity on every lease made or to be made, by *establishing, ordaining, and enacting*, that they shall be good leases against all succeeding Kings and Dukes, who should *at any time thereafter* have, inherit, or enjoy the Duchy, provided those leases were made under certain provisions, one of which provisions is, that they shall not exceed thirty-one years or three lives; and I say, so long as those provisions are complied with, so long does that perpetuity or tenant-right of renewal attach itself to the leases. The tenants under the constitution were to have and enjoy that perpetuity of interest given them by the Acts by means of renewable leases (as may be seen in reference to the 13th and 14th Charles II.) in the same manner as the tenants in Cornwall have and enjoy their perpetual copyhold estates by means of renewable leases, where they are first admitted to hold to them and their heirs according to the custom of the manor, and afterwards take a lease from the Duchy (out of what they call their Assessional Court) of the very same estate, to hold from seven years to seven years, renewable for ever, under a certain rent and a certain fine. And all the Acts are made to comprise those estates. This, his

Lordship knows and will recollect, as he was concerned in the case Rowe *v.* Brenton (see Concannon's Report of that Trial.) I mention this, because there is an affinity between this tenure and the present—the difference being only that one takes his title by custom of the manor, and the other by the constitution as established, and which also includes those customary estates, both near of kin—in point of interest the same. It is remarkable, too, that the Habendum, in all the leases under the constitution, is to hold for the term and *time* of thirty-one years, or three lives, which shews that it was a lease *for that time only;* and that the leases were not to be made longer than thirty-one years, or three lives *at a time,* which implies a renewal when that period expired; and it was never doubted but that the tenants in Cornwall had a right of renewal, as respects the surface of the land, and which is all the Clayton family contend for. If they, the tenants in Cornwall, have a right of renewal, and are comprised in those Acts which established the constitution, why is it to be denied that the same right exists as to the leasehold tenants in other parts of the kingdom, since all the Duchy lands throughout the kingdom are included in those Acts.

There is another circumstance which I will mention here, lest I may forget it, which is, that just at the period of establishing this constitution in 1623, the Earl of Ormond, who held large tracts of waste land in Ireland, began letting out those lands on leases for years renewable for ever,* under covenants to renew with his lessees. Whether it was a few years before or after I have not had time to ascertain, but it appears to me that either the Parliament followed his example, or he followed the example of Parliament; and it appears that about a sixth or seventh part of Ireland is let out on those leases, renewable for ever. If it be objected that, in the present case,

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* See Finlay on Renewals.

there was no covenant to renew, I answer by asking, who could covenant under the precarious and shifting tenure by which the Duchy was and is now held: consequently what could not be done by covenant, was caused to be done by the statute of 21st James, and which circumstance shews that the lands were given up and abandoned to the public, for the purpose of getting them built upon and improved, and shews the absolute necessity which existed for the establishing the constitution contended for.

> His Lordship again says, the enacting part of the Statute enacts that all leases made for thirty-one years, determinable on three lives, or leases made for not more than three lives, should be good and effectual in law, according to their purport and content, against all who should inherit the Duchy; and says, surely nothing can be more manifest than that it gave no other interest whatever beyond the lease actually granted, and that the words good and indefeasible meant only for those periods.

Now, in the first place, his Lordship is not correct in what he stated. The enacting part of the statute does not enact that all leases made for thirty-one years, or three lives, should be good; but they all enact, that *all* leases made or to be made should be good against *all* succeeding Kings and Dukes of Cornwall, and against *all* and every other person or persons who should *at any time thereafter* have, inherit, or enjoy the Duchy, not only by virtue of the limitations contained in the charter of Edward III. but by force of any Act of Parliament, or other limitation whatsoever, thereby, in the first place, creating the perpetual estate in favour of the tenant (as recommended by Mr. Glanvylle); and then, after this enactment, providing and defining to what particular description of leases that perpetuity of interest shall attach. Now this is quite a different thing to that which his Lordship endeavours to make it appear to be. The same proviso directs and provides, How

and in what manner the leases are to be renewed, from time to time, to the tenants, either in possession or reversion. Then his Lordship dwells on the words, " according to the purport and content." Now, on looking into Cowell, the lexicographer at that time (1623), I find that those words mean *design and intention*. Now, the manifest design and intention of these leases were, that they should be renewable leases, or why does the proviso chalk out the very mode and manner, and how and in what way, and under what rules and directions, leases were to be made and *renewed* from time to time, as the tenants desired their leases to be renewed, either in possession or reversion. His Lordship will see, in the next clause following, that the covenants are to be good against all those to whom the *interest* of the said leases should *thereafter* come, according to the *words* and contents, and which shews, that whilst the covenants were to be good, according to their words, the leases were to be good according to their design and intention, *i. e.* as renewable leases; and that the tenants' interest was a fixed estate, or, in other words, a tenant-right of renewal transmissible to his posterity, or to whomsoever he might dispose of it. The words renew or renewals occur almost in every Act, and which manifestly shews that it was a renewable interest that the Acts meant to give to the tenants.

> His Lordship says, also, that the intention of the Legislature was to make the leases good and indefeasible for thirty-one years, or three lives, and no longer.

Now there is no such expression, through the whole of the three-and-twenty Acts, as a good and indefeasible lease; where the words good and indefeasible are made use of, there is the word *estates*, and not leases, mentioned; there are the words *leases and estates* throughout the Acts. The word estates is applicable to the tenant-right of renewal, which is the estate spoken of by the Acts. Prince Charles made contracts with

the first tenants under the constitution for leases *and estates*; which is the interest which the tenant has in his lease beyond the term; for the term is made to expire for the purpose of producing fines on renewal; and to keep up the relation of landlord and tenant, for the special purpose of enabling the Duchy to receive and recover their rents as before the constitution. The tenants' interest in the lease never expires; that is good against all succeeding Kings and Dukes of Cornwall, who shall at *any time thereafter* have, inherit, or enjoy the Duchy. The intention of the Legislature expressly was, to give the tenants such a good, sure, fixed, and indefeasible *estate*, as would be sufficient to encourage him to outlay his capital in building upon and otherwise improving the lands, and not a thirty-one years' term or three lives, which is not sufficient, and is declared to be *not* sufficient by the Legislature itself—(see the Acts 33 Geo. III. and 1 & 2 Wm. IV.) How then can his Lordship argue against the express words and the plain common sense and meaning of the Acts of Parliament. His Lordship might as well tell me at once that black is white, and that I am bound to believe him, because he chooses to say so. But his Lordship seems to have overlooked that the Legislature has not fixed any positive period for which leases should be made: it is only said, *indefinitely*, for thirty-one years *or under*, or for *one, two, or three lives*, leaving the period to be fixed by the tenant, and wisely so, because no tenant would take any lease, with intention to build upon the lands, without first trying and proving the nature and quality of the soil on which he was about to lay out his money. It follows then, that he might, if he chose, have taken one of the Lord Chancellor's indefeasible leases for ten years, for five years, or even for two years, which would all have been good leases under the provisions of the Statute. And this indefeasible lease for ten years, five years, or two years, was (according to his Lordship's argument) to yield the tenant a sufficient encouragement to outlay his capital in building upon, manuring, and otherwise im-

proving the land; and as soon as he had laid out all his money, all his interest in this indefeasible lease was to be gone, and the Duchy were to have the liberty of entering and taking possession of the lands, and of all the poor man's outlay and industry, and all the buildings and improvement he had put upon it, to the ruin of his family and those who had lent him money on security of the improvements. Yet this is the construction which the Lord Chancellor has thought proper to put upon a constitution made and established by the wisdom of Parliament, for the express purpose of getting the Duchy lands built upon and improved at the tenants' expence. Even Dr. Johnson (if he had been consulted) says, the word indefeasible means any interest which cannot be defeated; and expressly says, *(such as an indefeasible estate,)* which cannot be defeated by lapse of time, or death of life. This is the foundation the Parliament provided for the tenant to build upon, not such a shallow, sandy foundation as one of his Lordship's indefeasible leases would have made: a house built upon such a foundation would have been blown down by the first puff of wind that came, and could have afforded *no security* to the tenant. The word indefeasible is applicable to freehold conveyances, but I never recollect its being used in any leases or conveyances of leaseholds. It is an indefeasible *estate*, not an indefeasible lease, which the Acts speak of; and that indefeasible estate means the *tenant-right of renewal*, which he has in his lease, which is in the nature of a grant of land, the same as adventurers take when they go over to settle themselves on any of his Majesty's possessions abroad: the same necessity existed for a permanency of interest in one case as in the other, and of course the same means was necessary to be used to effect the same end.

His Lordship speaks, in several parts of his judgment, of leases for thirty-one years, determinable on three lives.

On this I have only to remark, that his Lordship is incorrect, there being no such description of lease mentioned in any of the Acts.

His Lordship says, the Acts enabled the Crown to grant good and fixed estates, but only for years or lives; and argues, they were good compared with the bad estates, and fixed, compared with the uncertain and frail estates, which, but for the power of those Acts, were all the Crown or the Duchy could give.

Now the Acts do not enable the Crown, or the Duchy, to grant any leases at all, as I have said before; but that after stamping perpetuity on every lease made or to be made, they then direct to what description of leases that perpetuity shall extend. And as to their being good and fixed, in comparison with the bad and frail, that is not the question; the only question to be considered in this respect is, 'Is it such an estate as would be sufficient to encourage the tenant to outlay his capital in building upon, manuring, and otherwise improving the land—that is the plain question?' Then what is the answer. *No,* says the Legislature, *it is not a sufficient interest for that purpose,* and then away goes the Chancellor's argument.

His Lordship, speaking of the 13th and 14th Charles II., endeavours to apply the words *fixed estates* to a term which of itself is *not fixed,* but indefinite, left to the choice of the tenants; and, throughout all his arguments, he seems to treat the term as if the Acts had fixed it for thirty-one years, or three lives absolute.

Now this Act recites, that the lands had been held by leases for years, and for one, two, and three lives *indefinitely.* How then, I should like to know, can the words *fixed estates* be applied to an *indefinite* term, not fixed by the Acts. It seems to me like trying to put a new piece to an old garment, which, it is said, is every thing but a mark of wisdom. This Act says, it was by means of those leases the tenants had *fixed estates*; it therefore shews what I contend for, that the leases are the means by which the tenants have and enjoy that fixed

estate, that good estate, that indefeasible estate, and that perpetual estate, given them by the Acts. How can a lease for life only, or a lease for ten years, be a sufficient interest, when even a lease for thirty-one years' absolute, or for three lives absolute, is declared not to be sufficient by the late Acts. And yet it cannot be denied that the tenant was to have such an estate as *would* be sufficient: what then can this estate be, and what is it to be called, except it be the *tenant-right of renewal.* This Act says, by means of which leases the tenants having fixed estates, had been encouraged to lay out great sums of money, to the great advantage of the public. Now the words, *which leases,* must mean such leases as *were sufficient* for the purpose—for it cannot be argued as the Lord Chancellor attempts to argue it, that it was by means of leases which were *not sufficient* for the purpose, (*i. e.* for encouraging the tenants to build and improve) namely, a thirty-one years, or three lives absolute—and therefore this again proves the leases spoken of must have been renewable leases, that is, leases in which the tenant has such a vested interest as entitles him to his renewal of right and not by courtesy. How could a lease for thirty-one years or under, or for one, two, or three lives, have been sufficient for the purpose, as it evidently was, and is as evidently recognised by the Act to have been, without there had been the right of renewal attached to it, and which right of renewal must of necessity be that *fixed estate* spoken of, and which words evidently mean the right of renewal, which is well worthy the names the Acts of Parliament have given it, *i. e.* a good, sure, fixed, and indefeasible estate. Not like one of his Lordship's indefeasible estates for two years, or for one life, totally unworthy of such a name: for one must be gone in two years, the other might be gone before you could say it is an indefeasible estate.

His Lordship now comes to the letters-patent, and he says,
It was afterwards deemed expedient, indeed it probably was

found necessary to give some extension of the leasing power, for the purpose of encouraging builders; and, as early as 1777, the letters-patent were granted to the Clayton family for ninety-nine years, *determinable on three lives*, which otherwise would not have been valid; this was done, though it is contended from the frame of this grant, and the circumstance of it, that it was intended to be renewed as the lives dropped; and that this was the only part of the general question before him, there being nothing in the patent to carry the term beyond the three lives, and nothing of renewal referred to, and there being also an absolute want of all power to grant such a lease as is contended for at that time to any person, or on any consideration; and that, under these letters-patent, the lessees took, held, and built. But in 1793, it was deemed advisable to enlarge the leasing power, and by the Act then passed, upon a recital that various applications for building leases had been made, and that the parties could not undertake such operations if they had only terms of thirty-one years, or three lives, the Duchy was expressly empowered to grant leases for the absolute term of ninety-nine years, on improved annual ground rents; and that this Act, from the beginning to the end, says nothing about renewal.

Now, as regards the expediency or necessity of extending the leasing power, there was no leasing power to extend; all that was done was, the Clayton family finding they had an opportunity of getting the lands built upon by builders, and having such a description of lease under the constitution (a thirty-one years' lease) which was considered as not strictly applicable or satisfactory to the builders, though the term was renewable, because the usual building term of sixty-five years could not properly be carved out of a thirty-one years' term, though a renewable interest; application was made to the Duchy for another and more appropriate description of lease, warranted by the constitution, for the purpose of enabling the

Clayton family to grant building terms. This great improvement emanated from the Clayton family, and not from the Duchy, who had no interest, and took no interest in it, further than what was necessary to protect their own revenue, and no extension of any supposed leasing-power was necessary, further than it was necessary by the Private Clayton Building Act, the estate being then in settlement, and the tenant for life not having power to grant for more than twenty-one years. This private Act was obtained; but the power of leasing, as to the Duchy's power, remained the same as it was prior to the 21st James: and not one of the Acts enable the King or Duke to make a single lease, (therefore there could be no extension of power where none existed before;) although the Acts have been treated as enabling Statutes, for they only declare what leases shall be good leases under the constitution *after they are made*, and are to be brought up to the standard lease established by the constitution, to see if they be made, according to the provisions of the Acts, (valid leases) and such as would enable the tenant to borrow money upon as he wanted, from time to time, in proportion as he improved the property by his outlay and industry. Then, as respects the intention of renewing those letters-patent as the lives dropped, according to the frame of the grant and the circumstances of it, the Duchy well knew for what purposes this exchange of tenure was effected, and made no objection, because they knew they had no power to object. If they thought they had had any power, why not have taken the land into their own possession at this time, and have taken all the ground-rents to themselves. It would have been a charity in them so to have done, and it is more than probable they would have so done if they had had any such power. The letters-patent were granted to Sambroke Freeman, the surviving trustee of the marriage settlement of the Clayton family, to hold to him his executors, &c. for the *term* AND TIME of ninety-nine years (if William Clayton, George Clayton, and James Medwin, or either of them, should so long live,) upon and sub-

ject, nevertheless, to the trusts declared and concerning the said demised premises in and by the said indenture of settlement of the 10th June, 1761. Now, as the trusts contained in this settlement were indefinite, and might have continued a great number of years, I would ask, How this grant could attend the uses of the settlement without it had been understood by the Duchy and the Grantee that there was a right of renewal attached to the grant, and that renewals would be effected as heretofore they had been for two centuries before: there was no doubt expressed with regard to the tenant's right of renewal at this time, and it was a thing well understood by all the parties. Again, the habendum to hold for the term *and time*, shews it to have been considered a lease for *that time only*, renewable as heretofore, and this mode of expression is in all the ancient letters-patent—an expression to be found in no other habendums. Again, although the Duchy perfectly knew for what purpose the exchange of tenure was effected, still they make no alteration in the form of the lease, as to compelling the Clayton family to build upon and improve the property. The lease, in this respect, is the same as when leases were first granted under the constitution, at the time the property passed out of the Duchy into the tenant, on effecting the first purchase of a perpetual lease; which proves the Lessee has such an interest as the Duchy cannot now, nor ever could, deprive him of since the constitution has been established; the Duchy having given up and abandoned the property to the public, for the purpose of improving it, reserved no other interest in it than the power of receiving their rents. There is no compulsory covenant to compel the tenant to lay a single brick or stone upon the land, which shews that the tenant had such an interest as was of itself sufficient to encourage him, and did encourage him, to get the lands covered with building, which is the very same interest the Statute of James intended to give for the purposes of building and improving; and therefore those letters-patent are, of all others, more directly within the provisions

and true spirit and meaning of the original constitution, the encouragement for building and improving being the very life and spirit of all the Acts; and those letters-patent, by which the Clayton family now hold the Kennington estate, are a good valid lease under the constitution, and the means by which they are to have and enjoy the good, sure, fixed, and indefeasible estate, given them by virtue of the constitution as established by 21st James, and will so prove to be, notwithstanding the forcible entry and detainer unlawfully committed by the officers of the Duchy. And as to the Chancellor's argument, that "there is nothing in those letters-patent to carry the term beyond the three lives, and nothing of renewal referred to"; my answer is, that nothing was necessary, because the leases are nothing more than the mere machinery of the Acts, and the means by which the tenants are to have and enjoy the perpetuity of interest given them under the constitution. The Chancellor forgets that the tenants do not derive their title in the estate under the leases, but under the Acts; which gave them such a good, sure, fixed, and indefeasible estate as would be sufficient to encourage them to build upon and improve the land. He cannot say but that the tenants were to have such an estate as *would* be sufficient, and he cannot deny but that it is admitted by the Legislature, that a thirty-one years', or a three lives, is *not* sufficient, and of course he must admit that it was a larger estate intended to be given, and which of *necessity* must be a *tenant-right of renewal;* and I should be glad to know what *other name* can be given to it.

The tenant-right of renewal is an estate worthy the description the Legislature has given it, namely, a good, sure, fixed, and indefeasible estate, such as it was intended to be, and such as, in fact, has been, sufficient to encourage the tenants to build upon, manure, and improve the lands; whereas the good, fixed, and indefeasible estate which his Lordship talks about, such as an estate for two years, or for one life, is not worthy to be called an estate; for one must be gone in two years, the

other may be gone in an hour, or even before the words are out of your lips. How, I would ask his Lordship, could he think that such an estate as this, was that good, fixed, and indefeasible estate which the Legislature meant, nay promised and undertook to give to the tenants, and say it was all the estate intended to be given them; now if such had really been the case, what must have been the consequence? The answer is obvious; the Duchy lands must have still remained in their barren state, and the Duchy coffers would have been empty instead of full and running over. The vast improvement in the revenues of the Duchy has been brought about by means of the tenant-right of renewal *being attached to the leases*, by virtue of the constitution, and which alone has inspired the tenants with confidence in their outlay.

Under the constitution, the tenant takes *a perpetual estate*, the absolute necessity of which was pointed out by Mr. Glanvylle at the time the constitution was being framed; and which is given to the tenants upon condition that they are to have and enjoy it, by means of renewable leases, to be made for any period the tenant should chuse, not exceeding thirty-one years, or three lives at a time; this is the true nature of the tenure, and no other is reconcilable to the Acts either of Parliament or of the parties. The property was given up to be thus administered under the constitution, upon condition that the Parliament should provide that the usual rents, which theretofore were payable to the Duchy, together with all additional rents arising from lands which never before had yielded any rent, should still be reserved and made payable to the person who should have or inherit the Duchy.

It is unreasonable in his Lordship to attempt to argue that any indefinite term, or such an indefeasible lease as for two years or one life, was all the estate which was meant to be given by the Acts to encourage the tenants to embark their capital in building and improving, since there are Acts of Parliament which declare, that even a thirty-one years or three

lives absolute, is not a sufficient interest for either of these purposes; and though those Acts were procured to be passed to answer the design of the officers of the Duchy in their attempt to destroy the constitution, and ought to be repealed; yet they furnish evidence in support of the same—thus, the very means they take to overturn and subvert the constitution, furnish means of protecting it. And it seems to me so contrary to all manner of common sense and reason, that it amounts to folly, to attempt to argue such a point; and I am certain his Lordship, on reconsidering his judgment, will see and confess that he has mistaken the intention of the Acts altogether; having mistaken the leases for the end and design of the Legislature, instead of the means by which that end and design were to be carried into effect. Besides, the form of the leases was changed, at the time the property changed, as the leases themselves shew, for there is no covenant in the leases for building or improving—no covenant for protection of the land—no power reserved for the Duchy to enter to view the state and condition of the property—and no restriction as to selling, mortgaging, or otherwise disposing of the property. In vain would it be to attempt to give the tenant any less interest than a perpetual interest, (after payment of a full and fair consideration for the purchase thereof, subject to the payment of the old rent usually paid for the same :) to encourage him to outlay his capital, and to enable him to borrow money on mortgage—any less interest would never have answered the purpose. And it is well known to the Duchy, that the Clayton family did mortgage the property for £6000. *with the tenant-right of renewal thereto belonging*, in order to raise money to make the land fit for building upon; and it is also known to them, that this mortgage is *enrolled in the Duchy office*, which is more conclusive against them than any misconception, or any evidence that his Lordship could gather from the tenants' ignorance of their just rights, occasioned from lapse of time, and the constitution being hid from their view and

knowledge, as it appears it has been for a century past, by reason of the original Act having been abolished from the statute books.

As soon as the constitution was established, the very face of the leases was changed, for before, there were restrictions, but since the land has been abandoned and given up to Government and the public, to be improved; the tenants are allowed to do what they like with the land, the same as tenants of a manor holding copyholds of inheritance, without any let or hindrance, which shews that they have an interest beyond a thirty-one years, or three lives; for, had it not been so, the same covenants and restrictions would have been continued as formerly had been inserted in the old leases.

Then, as respects the statute of 33rd Geo. III., 1793, which his Lordship alludes to, he will find that this Act was procured to be passed in direct violation of the original constitution, as established by 21st James, and continued down to the 16th Geo. III. (under which Sir William Clayton's Letters Patent were granted,) all which Acts from the 22nd Charles II. (when the constitution underwent a thorough repair and amendment, in order to protect it from further violation), provide, that all leases made and to be made, otherwise than for thirty-one years, or under, and for one, two, or three lives, *should be null and void.* The good fortune which the Clayton family have had in getting this eighty-six acres of land in Kennington covered with buildings, instead of exciting the gratitude of the Duchy, has excited their envy; and the above Act was procured to be passed, with a view of doing away the tenant-right of renewal; to annul and to render the constitution of no effect to the tenants; and to make it appear that a lease of thirty-one years, or under, or for one, two, or three lives, was all the interest the Parliament of James meant to give to the tenant. It recites, that a thirty-one years, or three lives absolute, was found out not to be sufficient to encourage the tenants to improve even the waste land, *after it had been*

sufficient for 200 *years before, and even sufficient to get a large tract of land covered with buildings,* which, in my mind, operates as a confession, that there must have been a tenant-right of renewal annexed to all the leases, made under the constitution up to the 16th Geo. III., or how could the Duchy lands have been got built upon and improved, so much as to enhance their revenue to such an enormous amount as it now is, and to be of such advantage to the public, as was admitted by the legislature in the reign of Charles II. The recitals in this Act of 33rd Geo. III. are every thing but the truth : they falsely pretend, in order to deceive Parliament, and are totally in contradiction to what is said in the 13th and 14th Charles II., where it is admitted the tenants had had such an interest as had encouraged them to build upon and improve the lands, even *to the great advantage of the public.* The Duchy well know they owe all their vast revenue to this *tenant-right of renewal,* which, and which only has been the cause of their coffers being so much enriched, and but for the constitution they would have remained poor ; but now they are like the boy in the fable with his goose and golden eggs, they would feign destroy the constitution, to get at the 72,000 golden eggs at once, and which, if they could have got, would not have been their own, but would more properly have belonged to the revenue of the state.

> His Lordship says, " This Act, from the beginning to the end, says nothing about renewals."

To which I answer, that I should very much have wondered if it had; since it is evident, this and the Acts which follow, are passed for the purpose of breaking up the constitution, to violate the tenants' rights, and to get the property into their own hands. (See my observations on those Acts,—33d Geo. III. —Geo. IV. and 1st & 2nd Wm. IV.

These are the Acts which should be repealed; they are a disgrace to the officers of the Duchy who procured them to be passed,

and which reflect no great credit on those who suffered them to be passed, they being in direct violation of all the preceding Acts, and of the just rights and interests of the tenants. Their conduct, in this respect, I trust, will open the eyes of Parliament to a proper sense of their duty towards the tenants, whom the King, the Lords spiritual and temporal, and Commons, at all times stand pledged to defend, as well as the constitution under which they hold their perpetual estates; their ancestors having purchased and paid a valuable consideration for the same, and to which they are as justly entitled as the King is to his crown, or as any noblemen in the land are to their estates.

There is not a tenant upon the whole estate to whom the Duchy and the public are so much indebted as they are to the Clayton family, for the great improvements they have made upon this Kennington estate, which has been so purchased from the Duchy by their ancestors; and it seems to me that the conduct of the officers of the Duchy can by no means be justified, for it not only amounts to a great and unmerciful violation of the constitution of the Duchy, as established *for the mutual benefit of both parties*, but is an absolute violation of the tenants' just and vested rights and interests under it; and those Acts which the Duchy officers have procured to be passed since the 16th Geo. III. ought to be immediately repealed, as a disgrace to the Statute Book, and to those who procured them to be passed, as well as to the Parliament who passed them. It appears to me that the constitution of the country might just as well be destroyed at once, and the King be permitted to seize upon every nobleman's estate in the land, as that the officers of the Duchy should be permitted to do what they have been doing respecting the Clayton estate. I will be bound to say it will be found, upon enquiry, that every purchaser or tenant, on his contracting for a lease and an *estate in that lease*, from the time of Prince Charles down to the very last original lease made under the constitution, has paid a full and fair consideration for the absolute purchase of a *perpetual estate in his lease*,

namely, *the tenant-right of renewal of it;* and that such consideration-money, (subject to the payment of the usual rents to the Duchy, and exclusive of the fee and manorial rights,) are *equal to the purchase of any freehold estate of inheritance, free from any incumbrance,* or nearly so, making allowance for the policy of Government in selling the purchasers or tenants reasonably cheap bargains, for the purpose of encouraging them to improve the lands. Every person so taking is a purchaser as well as a tenant. He is a tenant *so far as his lease goes,* and he is a *purchaser* of an estate *so far as his right of renewal of the same lease goes.* It is said King Charles I. had contracted for *leases and estates.* The *estate* is the right of renewal of the lease so contracted for, and so purchased, for no absolute alienation of the property could be made; but every other interest short of the fee and royalties, and manorial rights, was given, and which led to the great improvement spoken of, and which abundantly realized the expectations of all parties, and proves that the interest which was given to the tenants by the Acts had been amply sufficient for the purpose intended.

CORROBORATING EVIDENCE in favor of the Tenant-right of Renewal, arising from the Acts of the Parties, and from the Historical Survey of the County of Cornwall.

I have hitherto considered the evidence in favour of the tenants' right of renewal, which arises from the Acts of Parliament themselves; I will now take into consideration the corroborating evidence, which arises from the Acts of the parties, and from the historical survey of the county of Cornwall, in order still further to shew, that the tenants were always considered as having such an interest in their respective leases and estates as was, in point of value to them, little short of a freehold, they having every beneficial ownership in the land which Parliament could give them, short of the fee and manorial rights.

1st. It appears, in a great number of sub-leases now lying before me, granted by the Clayton family from the year 1697 up to 1797, of this Kennington property, that there are covenants on the part of the sub-lessees, that in case the lessor should be *minded or desirous to renew* his estate or interest with the Duchy during the term granted, then, that the sub-lessee should surrender his term, to enable the lessor so to do, and that the lessor should grant his sub-lessee a fresh lease, so as to carry him through his term agreed for, which was generally for twenty-one years (the estate, among others, always being in family settlement.) In the same leases, the lessor covenants to indemnify his tenant from the *ground-rent*, which, in some of the leases, is called a quit-rent of £16. 10*s*. 9*d*. per annum, under which, it is said, the lessor held the land demised, with others, under the Duchy. The evidence arising from those leases shews, that the Clayton family ever considered themselves as having a tenant-right of renewal, *when and as often as they desired their leases to be renewed.* This is

strictly in accordance with the words in the Acts of Parliament—"*which leases are desired to be renewed by many of the said tenants.*" The ancient rent of £16. 10*s.* 9*d.* (being in some leases called a quit-rent,) under which the Clayton family held the estate, is also in accordance with the Acts; for under the 22d Charles II. the increased rent, which had been exacted from the Clayton family, was restored back to the ancient rent of £16. 10*s.* 9*d.*, which, by that Act, is made a rent to be for ever afterwards fixed and *charged* upon the Kennington estate; and the Duchy are for ever afterwards prevented and debarred by the Acts from ever again raising or increasing it. This is the rent by which they have ever since held the lands of the Duchy, and which shews that they have a vested interest in the property; for if the Duchy have no power to raise their rent, of course they have no power to turn them out of possession; and this again shews that the tenant was always considered as having a vested interest. The assessing the Clayton family, as the owners and proprietors of this estate, to the royal aid tax, in the time of King Charles II., also shews the property had changed from the Duchy to the tenant, leaving the fee and royalties only in the Duchy.

2nd. The regular succession of renewals by the Clayton family, for nearly two hundred years, without any let or hindrance, or denial, also proves it to have been a renewable interest, particularly when connected with the expression in the sub-leases. This long and uninterrupted enjoyment is also in accordance with the words of the Acts, "*and to the end that the tenants should be sure to have good, fixed, and indefeasible estates.*"

3rd. The putting this estate in the marriage settlements belonging to the Clayton family with their other estates, and limiting the same to uses which were *indefinite*, at a time when the estate was held under a thirty-one years' lease, made ac-

cording to the provisions of the original constitution; also shews, that it was always understood by the Clayton family that their interest in the estate was a renewable interest as of right, or how could the same extend to the uses, trusts, and purposes of settlements which were indefinite.

4th. The application to the Lords of the Treasury in 1776, to exchange the thirty-one years' lease to another description of lease under the same constitution, which was more appropriate for the purpose of granting out building-leases, at the time the building speculation was about to be carried into effect; and the application being made for the express purpose of enabling the late Sir William Clayton's father and himself to grant building leases, which are and were usually granted for sixty-five years; and the Lords of the Treasury having consented thereto, shews that it was understood at this period that a tenant-right of renewal was attached to the leases. If it had not been so considered, why did not the Lords of the Treasury then object to it; even the very person whom Sir William Clayton and his father employed to prepare the ground for building purposes, was the Surveyor usually employed by the Duchy, and who advanced money on mortgage of the letters-patent, *with the right of renewal thereto belonging*, which mortgage was increased, from time to time, to the amount of £6000, all of which was expended for the purposes of improving the property.

5th. This mortgage having the words twice over in it, "*together with all right and benefit of renewal thereto belonging*," and being actually recognized and enrolled in the Duchy office, shews that the *tenant-right of renewal* was a matter then well understood by the officers of the Duchy; or why did not they reject the enrolling of an instrument in which such right or benefit was asserted?

6th. The enrollment by the Duchy officers of another deed, being the assignment of the legal estate from the representatives of the surviving trustee of the marriage settlement of the late Sir William Clayton's father, to whom the last letters-patent or lease was granted, having in it the same words—"Together *with all right and benefit of renewal thereto belonging,*" is also a second recognition or admission of the officers of the Duchy of that right, and which probably would never have been disputed but for the good fortune the Clayton family have had in getting the ground all covered with building, and rendering the estate now very valuable, and which ought to have excited the gratitude of the officers of the Duchy instead of their envy, inasmuch as the more valuable the property was made, the better it would be for the public and all parties interested in the same.

7th. The letters-patent of 1777, under which the Clayton family now hold the estate (but the possession of which is now so unjustly taken from them), having been made to the trustee of the family settlement, "*To the same uses as were mentioned and contained in such settlement,*" and these uses being *indefinite,* so that renewals must have been necessary to have carried out those uses, shews also that renewals were contemplated as usual, and shews the intention of the Duchy to renew as heretofore.

8th. The taking the same fine as they usually did, on the thirty-one years' lease, calculated in the same manner on this new lease, (which, for the purpose of its validity, was necessarily made under the provisions of 21st James I. establishing the constitution; *i. e.* for ninety-nine years, determinable on three lives, in order to bring it within its provisions, and to make the perpetual estate or right of renewal attach to it,) and taking no more than a single fine; shews the Duchy had it in contemplation to renew as often as a life dropped; and this is

in accordance with the terms of the provision clause in the 21st James I., which provides how and in what manner the leases are to be renewed with the tenants, as well in possession as in reversion, so as not to exceed thirty-one years or three lives at a time. If this provision was not to be made use of, why put it in the Acts? If renewals had been matter of courtesy, this provision must have been totally unnecessary.

9th. The habendum in all the letters-patent granted being, To hold for the term *and time* of thirty-one years, or three lives, shews it to be a lease for that time, and indicates that renewals were contemplated; and this habendum was in all the previous letters-patent, from the period the first lease *and estate* was purchased.

10th. The reservation of the ancient rent of £16. 10*s*. 9*d*. a year in all the letters-patent, or leases from the Duchy, from the time the rent was so fixed by Act of Parliament; as the Duchy can never more alter it, shews also that the Clayton family have a vested interest, and that renewals must have been contemplated, and that of necessity there must have been a right of renewal, otherwise the Clayton family would have had eighty-six acres of land near London for £16. 10*s*. 9*d*. a year only; for without renewals there could arise no fines on renewals, (admitting fines could be lawfully demanded, but which I much doubt;) and those who are entitled to the fines would have been without revenue during three lives, which might have out-lasted half-a-dozen Dukes of Cornwall; who, in case of no renewals, would have been without such revenue. The absence of any covenant on the part of the tenant to build or improve, and of any reservation of liberty for the Duchy, or any person under them, to come on the premises for any purpose, and their liability to be sued as trespassers, all tend to shew that the lands are vested in the Clayton family, and are not the absolute property of the Duchy; and the

Acts, in express terms, call the property the houses and lands of the tenants.

11th. The report of the Judges (Willes and Nares) upon the private Clayton Building Act (which was obliged to be had on account of the estate being then in settlement, and the trustee of the settlement being restrained from making leases for more than twenty-one years under the settlement, in order to enable the trustee, &c. to grant building leases for sixty-five years, &c.) in which report they state their approval thereof in the words following: "*Subject to such fines, covenants, and conditions for renewal as were usual on the like occasion*"—shews that renewals were recognised by the judges as belonging to the Clayton estate. Sir Robert Taylor, the surveyor to the Board of Works, and who was usually employed by the Duchy as their surveyor, was one of the persons examined by the Judges on this occasion.

12th. But more particularly to shew the general understanding of this constitution, and the extent of interest the tenants of the Duchy of Cornwall were always considered to have had in their respective tenements and lands; what is said in Gilbert's Historical Survey of the County of Cornwall is worthy of great consideration, because it shews most distinctly how the constitution of the Duchy of Cornwall (as established by the 21st James for the benefits of its tenants) was understood in that county; where, speaking of what is called the Duchy lands, Mr. Gilbert, the historian, says, "*Many hundreds of families "are concerned in these estates and tenures; some by settle- "ments, others by purchases for valuable considerations, &c.; "and being equivalent to copyholds in fee, they generally "fetch a price, when sold, almost equal to that of fee simple.*"

Now what can possibly be more clear, than that the statute of 21st James had conferred this kind of estate upon every tenant

who took a lease under it; this is the good, sure, fixed, and indefeasible estate which was intended to be given to the tenants, and not a mere lease, which is nothing more than the machinery of the Acts. And I have no doubt but, on examination into the counterparts of all the original leases, it will be found that a fair and bonâ fide consideration was given for the purchase of this estate, which has all the incidents of a copyhold in fee, as I have already shewn. It was necessary that the lands should have been given up to the public, in order to their improvement, as it must be evident they never could be improved whilst they remained in the hands of the Duchy; and after giving the tenants the above estate, it was necessary, in order to preserve the relation of landlord and tenant, and to prevent the tenant's interest, working itself into a fee farm, that the perpetual estate so given should be had and enjoyed by means of renewable leases, reserving the usual rents to the Duchy according to the provisions of the Act, and the condition upon which the lands were so given up; and thus the Duchy's interest was protected, and the same power given to them to receive and recover their rents as usual, as well as all additional rents to arise from lands which before had yielded no rent whatever; by which means (it will be seen) the Duchy are placed in a better condition than they were before the making of the constitution. All other powers over the surface of the estate were at this time abandoned and given up to the Government and to Parliament, with a view to their establishing some measure to get the lands built upon and improved for the good of the public, and not to suffer them to remain in a state of barrenness any longer. According to the constitution and the leases which have been made under it, the tenant has all power over the estate transferred to him, subject only to the rents; and he is left at liberty to do what he will with the land without controul of the Duchy or any one else—and why? because he has a vested interest given him by the Acts, and it is lawful for a man to do what he will with his own. This

estate, therefore, as respects the surface, is the tenant's own estate, subject only to the fee and royalties remaining in the Duchy and the ancient rent of £16. 10*s*. 9*d*., and subject to its being enjoyed by means of leases renewable for ever. The Duchy have no power to raise the rent, no power to turn the tenant out of possession, and I greatly question if they have any power to ask or demand any fine at all, much less an exorbitant one of £72,000 for putting in one life only; but on this point I shall say something more under the next head.

ADDITIONAL OBSERVATIONS AS TO THE POWER OF THE DUCHY TO TAKE FINES.

I have hitherto treated the subject as if I had considered the Duchy from long usage entitled to take fines on renewals; but, on more mature consideration, and again on more deeply reflecting on the original spirit and meaning of the constitution, and the causes which of necessity led to it, and the troublesome times and civil wars which soon afterwards followed, I see every reason to convince me, that, agreeably to the original intention of the constitution, the tenants were to be entitled to their renewals without any further fine or consideration at all, having once paid a *valuable consideration* under the name of a fine, for the absolute purchase of a perpetual estate, subject to the usual rents; or, in other words, for the absolute purchase of a perpetual lease, renewable for ever, subject to the same rents to be secured to the Duchy by leases made and to be made under the provisions of the Act; and that after the Duchy was thus provided for by the constitution, and placed in a much better situation than they were before, or ever could have been under the old constitution or charters of Edward III.; the tenants were to have and enjoy the estate as their own, to do just as they pleased, without controul; and to have and enjoy all the fruits of their purchase, and of all their own outlay, labour, and industry thereon, without the payment of any further fine or consideration whatever on any subsequent renewal. The fine paid on the first lease *and estate* purchased, is the consideration paid for the purchase of a perpetual estate in the surface of the land; and every original lease when taken is as fair and bonâ fide a sale and purchase for a valuable consideration as any transaction between vendor and purchaser can be at the present day; and considering the estates are so purchased, subject to the

payment of the same rent to the Duchy as before, and excepting to the Duchy the royalties and manorial-rights ; the consideration-money given for the lease *and estate* so purchased is equal to what is now given at the present day for the purchase of an absolute estate of inheritance free from all incumbrances ; and I have no doubt but this will be found to be so on enquiry. Then, I would ask, what can be more reasonable and just, according to an old law maxim, that "that which a man sows he shall reap;" and where is the difference, whether a tenant chooses to sow his land with corn, or plant it with houses. It would puzzle me, and I think it would puzzle the Duchy officers, and the late Lord Chancellor himself, to shew that any person has a right to reap the benefit of those houses besides the tenant, the immediate lessee under the constitution, who caused them to be planted ; for the tenant is only to hold the lands under the Duchy, in the same way as a copyholder is to hold the land under the Lord, whilst all the beneficial ownership of the lands is in the tenant.

OBSERVATIONS AS TO THE FINES WHICH HAVE BEEN TAKEN ON RENEWAL, AND HOW THE PRACTICE OF TAKING THOSE FINES ORIGINATED.

Now, with regard to the fines which have been taken on renewals, since the establishment of the constitution, and since the first fines were taken as and for the purchase of an absolute and indefeasible perpetual estate, or tenant-right of renewal of a perpetual lease; I see nothing in any of the Acts which allows any further or other fines to be taken by the legislature, beyond the fine or consideration first taken, on granting the first lease *and estate*, which the tenant takes under the constitution: then, how is it that fines have been taken by the Duchy for renewals ever since the Restoration of Charles II.? My answer to this is, that on his restoration to the Kingdom, (which had been suffering for nearly twenty years from commotion and civil wars), with a revenue *not sufficient* to carry on the government, it became absolutely necessary for Parliament and the great officers of state to raise the King money, with which to carry on his government; and among the various arbitrary (not legal) measures resorted to for that purpose, was the one in question, viz., that of levying fines on renewing those leases, and increasing the rents of other tenants holding under the constitution. And this, as it seems clear to me, will turn out to be so, on enquiry; so that the taking and demanding fines on renewal of the leases had *no legal origin*—no legal authority—but originated *in exaction*, and was imposed by an order of the then Lords of the Treasury, about, or perhaps at the same time, as the increased rents were imposed against law, and in violation of the tenants' just rights and interests, and although obliged to be borne as far as it could be borne by the subjects, against the increased rents, the tenants found it necessary to complain, because, the reserving *larger rents than the constitution allowed*, affected the validity

of their leases, inasmuch as it rendered it doubtful whether or not they were such leases as the perpetuity of interest (intended to be given by the Act) could attach to, and therefore this was a thing which could not be borne by the tenants, and of this violation they complained, and upon this consideration their grievance was immediately redressed. Now, as to the fines exacted on renewal of the leases, that was a thing which the tenants could and did submit to, because it was a matter not within the provisions of the statute, and consequently it did not invalidate or interfere with their title; and the estates having been much improved in the hands of the tenants, and still improving, and the necessity of the state demanding a sacrifice to be made for its government; fines were in the first place exacted and submitted to without the authority or force of any law, and have from that period ever since been submitted to, because they appear to have been comparatively reasonable, never exceeding one-and-a-half year's rent reserved to the lessee paying the fine. Now, I will venture to challenge the Duchy officers, to produce or shew forth any legal authority whatever for taking any fine, after the first fine is paid; that being a fair consideration (though paid in the name of a fine) for the absolute purchase of a perpetual estate in the surface of the land, subject to the manorial rights, and such usual rents as were before payable to the Duchy.

Then I say, that as soon as the public revenue was restored and in such a situation as not to be obliged to raise money by those arbitary means; so soon as the same became sufficient for the public services of the state, those fines ought, in point of justice, equity, and good conscience, to have ceased and no longer to have been exacted. It appears that, in the reign of William and Mary, they were considered to form part of the public revenue of the state. The officers of the Duchy should therefore be called upon, by this new Parliament, to shew when they ceased to pay them over to the public treasury, and from that period they will have to account for them either

to the public, or to the tenant. They do not appear to form any part of the King's private revenue, for all the revenue arising from the Duchy lands held under the constitution, is confined to the revenue arising from the *rents directed to be reserved to them by the provisions of the constitution,* (to which constitution, the Duke of Cornwall, the King, and the Parliament are all bound,) and no other revenue is reserved or secured to the Duchy, beyond the rents and the fines to be taken as consideration on sale and purchase of original leases in the first instance, which, as I have said before, will be found equal to that of an estate in fee-simple, all things being considered on both sides.

In the Clayton case, there appears to have been at least fifteen years' purchase given merely for the surface, without royalties or manorial rights, and subject to £16. 10*s*. 9*d*. a year, which is 3*s*. 10*d*. an acre (or thereabouts), at a time too when it was a mere marsh, and which might be considered the then full value of it, before any improvement took place. Indeed, when it is considered that persons now living can prove it to have been covered with water for two or three, or even four months in the year, when half of it was used as nursery ground; and when it can be proved, that no longer than three years since, the rains coming from the Norwood hills filled the cellars of the houses with water, forced down garden walls, &c., and otherwise did great damage; these circumstances shew what the land must have been worth in the reign of James I.; and also shew the necessity that must have existed for giving the tenant a fixed and durable interest, in order to get it drained, built upon, and improved.

Prince Charles was allowed to get as much as he could for the sale of perpetual leases from all who chose to invest their capital in the purchase thereof;—His successors, Kings or Dukes, have done the same, and the lands were got built upon, and improved, to the great advantage of the public; and at the same time, the former revenue of the Duchy

was much increased by bringing into cultivation the waste lands which before never yielded any rent: thus, the constitution has worked well, and answered the end and design of the legislature, and of all parties connected with it: but now the Duchy officers have again *violated* the rights of the tenants by an act something in the nature of a forcible entry and detainer, for which Parliament are bound in honor, and in performance of their duty towards the tenants, to call them to an account.

It may be asked, Why the Acts of Parliament did not at once declare, that the estate given to the tenant was a tenant-right of renewal, and call it by that name? My answer to this is, How could they do it? since the tenant-right of renewal is created by the Acts, and does not accrue till after the Acts have received the Royal assent; but immediately thereupon, the tenant-right does accrue: and the Acts could not call it a tenant-right of renewal before it was so made. But, although it could not be designated as a tenant-right of renewal before it was made so, yet it gives it the name of such a good, sure, fixed, and indefeasible estate, as would be sufficient to encourage a great and extensive outlay of capital; and this encouragement could not have been given, without a tenant-right of renewal being annexed to the leases; therefore, it is the same thing as if it had been so called in the Acts. The Acts are pregnant with this estate, and on their receiving the Royal assent, they bring forth the tenant-right of renewal, which is the estate originally sold by Prince Charles, and purchased by the tenants; and the same has been so sold by, and purchased from, every succeeding King and Duke. It cannot be called an estate in fee, because the fee is in the Duke, and in the King as trustee of the estate whilst the Dukedom is in abeyance, until there comes another Duke extant. It cannot be called an estate for life, because the legislature has declared that a lease for one, two, or three lives is not a sufficient estate to encourage building and im-

proving. It cannot be called an estate for years, for the same reason, that the legislature has declared a lease for 31 years or under is not a sufficient estate for that purpose. What then can it be called? Why, it can be called *a perpetual estate*, which is what Mr. Glanvyle calls it. What, then, is the legal definition of this perpetual estate, but *a tenant-right of renewal*. I think it will puzzle all the lawyers in the kingdom to give it any other definition, or call it by any other name.

The constitution was established for the purpose of protecting the tenant in the full enjoyment of his tenant-right of renewal, thus given to him, and thus created by the constitution, for the purpose of giving him encouragement to outlay his capital in building and improving. And shall the officers of the Duchy be permitted to concoct and secretly to plan measures to destroy the constitution, so wisely established and ordained by the 21st James, and afterwards amended and confirmed by subsequent Parliaments, (the wisdom of all which appears from the good effect of and well-working of the constitution), and to hinder and deter the tenant from renewing his estate as heretofore, and to deprive him of his justly vested rights and interests under it, all which have been bought and paid for by his ancestors. How could the tenants have an *indefeasible* estate, if the officers have power to defeat it? And how can they have power to fix an exorbitant and prohibitory fine of £72,000. for putting in one life, when they have no power even to raise the ancient rent of £16. 10*s*. 9*d*. the Clayton family having paid a large sum, to have it so fixed, that it should never be raised again, and with a view to bring the lease within the provisions of the constitution, so as to make the perpetuity of interest attach beyond the possibility of a doubt. Would they have paid this money, unless they had had a vested interest in the estate, such as the Duchy could never deprive them of. Further, the officers of the Duchy have no power to enter on the land without being subject to an action of trespass, as appears from the present Letters Patent,

and as appears from all the ancient Letters Patent; is it, therefore, likely that they can have power to do what they have been doing. I think I have already shown that they have no other power over the estate, than to receive and recover the rents directed to be reserved to them under the constitution, and which is the full extent of their power.

How, I would ask, is it, that all the Acts of Parliament have a retrospective operation, enacting that *all leases made*, as well as those to be made, should be good in perpetuity? Can any one deny but that a lease made by Charles I. is good against William IV; and how can this be, unless the tenant had an estate in his lease, *i. e.* the tenant-right of renewal thereof. An Act to enable his Majesty to make leases, can only have a prospective operation—all the Acts relating to this constitution have a retrospective as well as a prospective operation, which plainly shews that they are not enabling statutes, but declaratory only, pointing out what description of leases shall be good *after they are made;* there are no enabling words in the enactments of any of the Acts: the idea of these being enabling statutes, could only have been gathered from the titles of the Acts, which have nothing to do with their construction, and which were continued merely for the purpose of shewing that the perpetuity of the estate given to the tenant was to be enjoyed by means of leases, which the King or Duke was enabled to make; not by virtue of any Act enabling them to make leases, but because the Acts pointed out what leases should be good leases in perpetuity, under the constitution, *after they were made.* The leases have never been made under any power more than existed before the 21st James I., and in many cases, leases have been made when no Act of Parliament existed, *i. e.* before another Act was passed after the time limited by the preceding Acts, had expired; and such time was so limited to encourage speculators and adventurers to come in and purchase, and take land under the constitution, holding the tenure out as an advantageous investment of

capital, to those who were fond of agricultural or horticultural pursuits, or, in other words, for making contracts for leases, *and estates in those leases,* to be made and granted under the constitution.

No person would be so unwise as to purchase land whereon it was necessary to build houses, barns, stables, and other buildings necessary for its occupation, before he had any opportunity of trying and ascertaining the nature of the soil; it was for this purpose the tenant was left at liberty to take as short a lease as he chose, in order that he might have an opportunity of ascertaining if the lands were improveable, and if the speculation would answer his purpose; if it did, he was at liberty to fill up his lease according to the provisions of the constitution, and as it run out, to fill it up again, as often as he liked; and if it did not, he was at liberty to abandon the same: for no person of any experience in the natnre and quality of soils, would be confined to a speculation which might ruin himself and family, which would most certainly be the case if a tenant got upon a bad unproductive soil.

The perpetual estate given to the tenants, is an estate upon condition that the tenant should hold and enjoy it by means of renewable leases; and it was by means of those leases the 13th and 14th Charles II. recognized the tenants having *fixed estates,* and so had been encouraged to lay out large sums of money *to the great advantage of the public.* It was given to him also upon condition that the usual rents should still be reserved and made payable to the Duchy, as theretofore, with such additional rents as the waste lands might produce, and by which the Duchy was placed in a much better situation than they were before the establishment of the constitution.

Supposing the late Lord Chancellor had been living in the reign of James I., when the constitution was established, for the purpose of getting the Duchy lands built upon and improved, and of giving the tenants such a good, sure, fixed, and indefeasible estate in the land, as would be sufficient to en-

courage them so to do. I would ask his Lordship if he would have ventured to have recommended one of *his* indefeasible leases as sufficient for that purpose? or whether he would not have recommended the same perpetual estate as Mr. Glanvylle recommended as absolutely necessary for the purpose of preventing the lands from still remaining in a barren state.

I have not any doubt but his Lordship will now see his error, and that the tenant has a vested interest by law, which he cannot and ought not to be deprived of, and that the tenant and purchaser is entitled to his renewal, without the payment of *any fine*. The two former, I have always contended for; the latter I now contend for as well; for I see no reason why, after a man has purchased and paid a valuable consideration for an estate, whether freehold or leasehold, he should not be permitted to enjoy the same, free from the control of the vendor, his heirs and successors; and it can never be argued that it was only a mere lease for an indefinite term of thirty-one years or under, or for one, two, or three lives, which he bought and paid a valuable consideration for, subject to the usual rents; when the consideration paid was (all things being considered) equal to the purchase of a fee simple estate of inheritance, free from incumbrances.

I would ask his Lordship, what are all the preambles of the Acts, but an express promise and undertaking by Parliament to give the tenants such a good, sure, fixed, and indefeasible estate, as would be sufficient to encourage them to outlay their capital in building upon and otherwise improving the property. And what are all the enacting clauses, but the carrying into effect that promise and undertaking, by making all leases made and to be made to operate retrospectively as well as prospectively, according to the direction of Mr. Glanvylle, who said, that the law should be so made that leases should at all times hold good against the King and Duke, and all others who should *at any time thereafter* have, inherit, or enjoy the Duchy; not only by virtue of the limitations contained in the

Charter of Edward III., but by force and virtue of any Act of Parliament, or other limitation whatsoever. And what is all this for, but for the purpose of creating that *perpetual estate, which Mr. Glanvylle said was so absolutely necessary to be given*; and continuing that estate to the tenants, who are bonâ fide purchasers of it for a valuable consideration. I would also ask, what the provision-clause was introduced for, but to shew that this perpetual estate was to be an estate, upon condition that the same should be had and enjoyed by means of renewable leases; pointing out how, in what manner, and under what restrictions those renewable leases were to be made, in order to make them good renewable leases under the constitution, and in order that such perpetuity of interest should attach itself to every lease so made, and that the tenants should be at liberty to renew, from time to time, the leases and estates which they had purchased and paid for.

I would also ask where was the necessity of providing the very mode and manner, how, and in what way the tenants were to effect their renewals from time to time, if it was not so that they were entitled to have their leases renewed as often as, *in the language of the Acts of Parliament, "they desired their leases to be renewed."*

I would also ask, why the covenants in the leases were made good against all persons to whom *the interest of the leases* should THEREAFTER come, but to shew that it was a vested interest, transmissible to the representatives and assignees of the tenant, through succeeding generations, and that the covenants entered into in the original lease, should run with the land for ever thereafter, even should Parliament abolish the Dukedom.

I would also ask, if the wording of the saving clause, where the rights, interests, and tenures of all persons are saved, (other than the Duchy and their successors, and all others who should thereafter inherit the Duchy), does not plainly shew, that the Duchy's interest was, from that time, extinguished,

abandoned, and given up to government and the public; it being no longer of use to them, but detrimental to themselves and the public to keep the lands any longer in their barren state; and which were so given up, upon condition that the same rents should be reserved to them in future as they had formerly received, together with what rents could be made (under the provisions of the constitution) from the waste lands, which never before had yielded any rent; and if this was not a great benefit and advantage to the Duchy and to the public.

I would also ask, if the Acts of 13th and 14th Charles II. do not admit that it was by *means* of these leases that the tenants had enjoyed *fixed estates*, and had been encouraged to lay out their money in building, improving, and manuring the lands.

I would also ask, if the interest of the Duchy is not plainly defined to be a revenue arising out of the estate, whilst the interest of the tenants is defined by admitting the houses and lands to be the houses and lands of the tenants, which they were to enjoy for the benefit of their families; and if the interest of the Duchy is not confined to the rents only.

COPYHOLDS.

Now, in respect to what his Lordship says about the analogy of the present case to the custom of copyholds in the northern manors, as mentioned by the learned Counsel, who advocated the cause before him; I perfectly agree with his Lordship, that there is no ground whereon to found a claim of renewal upon any such custom; nor should I ever have thought of recommending any such line of argument, having a far better foundation to go upon. All I have to say about copyholds is, that leases and grants by copy of court roll are brought within the purview of the Acts; and that in the county of Cornwall, where the tenant is admitted to hold to him and his heirs, he is afterwards obliged to have and enjoy that perpetuity of interest by means of renewable leases, from seven years to seven years;* and that there is a great similarity between this sort of holding and the holding under the constitution established by the statute of James, for which I contend. It ought to be known, too, that the same Clayton family who are entitled to this Kennington estate, (being the younger children), now enjoy a *copyhold* estate at Kennington, adjoining this leasehold estate in question, which I believe is in some degree intermixed with it, and which is also held under the Duchy, as lords of the manor of Kennington. Now, as this leasehold estate is described to be part and parcel of the demesne lands formerly belonging to the lord of the manor of Kennington, it is somewhat extraordinary that the Duchy officers should attempt to exact a larger fine on renewal of this leasehold estate, than they take for a fine on death or alienation of this copyhold estate of inheritance, adjoining and lying intermixed therewith: and the following STATEMENT will show, that there has been but a shade of difference between those two holdings, as appears by the following incidents belonging to each, for these last 200 years:—

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* See Concannon's report of Rowe *v.* Brenton.

COPYHOLD OF INHERITANCE, *Now belonging to the Clayton Family.*	LEASEHOLD, *Now belonging to ditto, being the Estate in question, and which immediately adjoins the Copyhold.*
INCIDENTS.	INCIDENTS.
I.—The fee is in the Duchy.	I.—So it is here.
II.—The royalties and timber belong to the lord.	II.—So they do here, and are expressly excepted out of the demise, the manors and royalties being not allowed to be leased by the Acts.
III.—The tenant goes into Court, and *prays* to be admitted.	III.—The tenant goes to the Duchy, and *desires* his lease to be renewed.
IV.—A fine not exceeding two years' rent actually received by the tenant, is payable on death or alienation, which might be considered to happen once in about every ten years.	IV.—A fine of 1½ year's rent, calculated in the same manner, appears to have been paid about every ten years, ever since the establishment of the constitution, until the last letters-patent were granted.
V.—A small quit-rent of 2*s*.6*d*. or thereabouts, is payable for this Copyhold annually.	V.—This leasehold pays £16. 10*s*. 9*d*. a year, which seems to account for the difference in calculating the fine on renewal

COPYHOLD OF INHERITANCE, *Now belonging to the Clayton Family.*	LEASEHOLD, *Now belonging to ditto, being the Estate in question, and which immediately adjoins the Copyhold.*
INCIDENTS.	INCIDENTS.
VI.—If the lord refuse to admit the copyholder, the Court of King's Bench has power to compel him to admit the tenant by mandamus.	VI.—Here, if the officers of the Duchy refuse to renew the tenant's interest in the estate, Parliament have the power to compel them, as being the framers and establishers of the constitution, which is in the nature of, and equal in authority to, the custom of a manor.
VII.—The lords hold their courts at stated times for the admission of the tenants of the manor.	VII.—Parliament do the same thing in their Acts passed, allowing the tenants and purchasers seven years from time to time, to come in and take new leases, and to renew their interest under the old ones, whenever they may *desire* so to do.
VIII.—The Copyholder is liable to a forfeiture of his estate to the lords, if he does not come in to be admitted after three proclamations.	VIII.—So are those leasehold tenants under the Duchy liable to forfeit their estates, if they neglect or refuse to renew after due and proper notice given to them for that purpose.

Thus, it will be seen, there is but very little difference as to the incidents belonging to each estate; and as the Acts are made to take in copyholds as well as leaseholds under the constitution, supposing a copyholder (the Clayton family for instance) had chosen to surrender their copyhold estate up to the lord, and to have taken a lease *and estate* under the constitution, which I consider they were at liberty to do, is it reasonable to suppose that by so doing they would have forfeited their perpetuity of interest, which they before enjoyed? It appears to me, from comparison of the incidents belonging to each, that it was the intention of Parliament to give to the tenants under the constitution, the same sort of interest as a Copyholder of inheritance enjoys.

It is worthy of consideration, too, that Prince Charles, as the then Duke of Cornwall, was party to the constitution when established—that the King himself was a party—that the Lords Spiritual and Temporal, and Commons, were also parties to this constitution, which they themselves established for the benefit of the tenants as well as the Duchy. And shall it be said that they are not all bound by the constitution so established by them, for the purpose of getting the Duchy lands built upon and improved at the tenant's expense; and shall it be said, that after promising and undertaking that the tenants should have and enjoy *good and indefeasible estates*, in order to encourage them to become purchasers of leases and estates, and to lay out and invest their capital in building and improving under the constitution; and after thus exciting them to do so, and encouraging them to put their full trust, faith, and confidence in the King and Parliament, in seeing that they had this good estate dealt out to them from time to time, by means of renewable leases, as it was intended they should have; and which was absolutely promised them by Parliament, and which has actually been so dealt out to them, by means of such renewable leases, for upwards of two hundred years last past; shall it be said that this indefeasible estate shall, after

the expiration of two centuries' peaceable enjoyment, be now liable to be defeated by the arbitrary conduct of the officers of the Duchy.

The words of the Acts prove that the tenants were to have good estates, such as *were* sufficient to encourage them to build and improve ;—the arguments of Lord Brougham tend to prove that they were to have *bad* estates, such as were *not* sufficient for the purpose.

I would ask his Lordship, if it were likely, when the Parliament of James sat in committee, to concoct a measure that *would be sufficient* to get the Duchy lands built upon and improved at the tenants' expense ; that they should have concocted and planned a measure that *would not be sufficient* for the purpose ; and if the largest estate and interest they could give to the tenant and purchaser, were not more likely to bring about the greatest improvement ; and if it were likely they should adopt a measure which the legislature has admitted was not of itself sufficient to bring about any improvement at all.

I would again ask his Lordship, if it is any matter of surprise to find that this property was given up to the public, to be so got built upon and improved at the tenants' and purchasers' expense, when it is considered, that so long as the same remained in the hands of the Duchy, it must have remained waste and unimproved? And if it is any matter of surprise that Parliament should find it necessary to establish a constitution for that purpose ; and on finding that the property, from the nature of its tenure, was unalienable, that they should give the tenant every interest in the land they could give, (short of an actual alienation,) in order to encourage him to an outlay of his capital, (by way of investment,) for the future benefit of himself and family, and for the public good? Was there any thing novel in this proceeding? Was not the Duke of Ormond doing the very same thing, about the very same period, in Ireland, where leases, renewable for ever, were established

by him, and which include a great portion of the lands in Ireland, to the extent of one-sixth, or thereabouts, of the whole kingdom.*

Although the officers of the Duchy have, by their Acts, been endeavouring to destroy the constitution, and to defeat the tenants of their vested rights and interests under it; if I auger rightly, the information I have given, will bring the constitution to light again, in spite of their every effort to stifle it. They little think what awaits them, should Parliament but do their duty towards the tenants, and which I have no doubt they will do; for it appears to me, that the faith and honor of the King and Parliament stand pledged to the tenants, to see that they are properly protected in the fair enjoyment of their tenure; and I trust they will act as faithful guardians of the constitution, which their predecessors so wisely established for the mutual benefit of the Duchy and its tenants, and follow the example of former Parliaments, by protecting and preserving the tenants from the illegal and oppressive proceedings of the officers of the Duchy, and restore the Clayton family, as well as all the other tenants, to their just rights and privileges, under the constitution so established.

It appears clear to me that the tenants, so called, are entitled to be treated as purchasers, not as mere tenants; for after the tenant has fairly bought and paid for his lease and estate, he is, to all intents, as regards the estate in his lease, (being the tenant-right of renewal of his lease,) a purchaser. I think the law of the land can never suffer the vendor's heirs or successors, to dispossess the tenant and purchaser of any estate for a valuable consideration, particularly after a peaceable enjoyment for 200 years: if this were to be the law, what would soon become of every estate in the kingdom?

In all leases granted under a power, that power is generally recited in the lease; there is no power recited in any of the Duchy leases, because they are not granted under any power:

* See Finley on renewals.

and this again shews that they are the mere machinery by which the constitution is worked; not the end and design of the legislature, but the means only, by which that end and design is to be effected or carried into execution.

I entertain the fullest confidence, that when his Majesty comes to be better advised, and to be made fully acquainted with the true state of the case; he will not only be displeased, but will feel indignant at the conduct of those persons who have led him into so egregious an error.

The Duchy lands (so called) are different from Crown lands, the latter having no constitution to govern them, because no necessity ever existed for the establishment of such a constitution, as in the case of the Duchy lands.

Is it a matter to be wondered at, that the present tenants of the Duchy of Cornwall, to whom the interest of the said leases are now come, after so many years having elapsed since the establishment of the constitution, and their estates having been enjoyed through so many generations, and having nothing to shew for their title but their present existing leases, (the original Acts of Parliament, which first established the constitution, under which they hold their estates, having been abolished from the present edition of the statutes now in use,) should almost have lost sight of their tenure; or is it a matter of wonder, that under these circumstances, the Parliament themselves should have lost sight of it? This it is what has given the officers of the Duchy the opportunity of promulgating the new doctrine, that renewals were only a matter of courtesy, and of manufacturing Acts of Parliament suitable to their own purposes, and getting them passed in order to destroy the constitution, and to give them a pretext for seizing upon all the estates and properties of the tenants, which they and their ancestors have, for these last 200 years, been making at their own cost and expence, by building upon and improving the land for the benefit of, and for the purpose of making provision for themselves and families, from what was formerly waste

lands, and which, before the constitution was established, were of no value whatever to the Duchy, and were therefore abandoned and given up, through government, to the tenants, to be built upon and improved for their own and their families' immediate benefit; having also in view the benefit of the public, as well as the benefit which the Duchy would derive from the rents that could be obtained from the waste lands, which before yielded no rent.

The long and short of the business is this:—From the lapse of 200 years and upwards since the establishment of the constitution, the late Parliaments have lost sight of it altogether, and consequently have lost sight also of their duty to the tenants, and were off their watch and ward; and the officers of the Duchy seeing this, have taken the advantage, and have procured acts destructive of the tenants' rights; but the new Parliament, I trust, will be more attentive to their duty, and more watchful over the interest of the tenants in future; for, as I humbly conceive, they stand in the situation of guardians of the constitution, and of the tenants' rights and interests under it.

This, I consider, the greatest institution in the country, and which, for the honor of the King and Parliament, should be upheld: it seems to me to involve a grand principle of the constitution, *viz.* the protection of property; for according to Lord Brougham's decision, it would put the property of every nobleman in the kingdom at the mercy of the crown. The constitution of the Duchy of Cornwall is as dear to the tenants, as the constitution of the kingdom is dear to every nobleman and commoner in the land; the violation of one cannot but effect the other in this respect; and with all due submission to his Lordship, I think he has entirely mistaken the case, and that when he comes to reconsider his judgment, he will be sorry for having delivered it.

To revert back a little, I should like to know what other interest the Duchy had in the Clayton estate, at the time their

last Letters Patent were granted in 1777, further or beyond the rent-charge of £16. 10*s*. 9*d*. per annum, issuing out of and payable to them from the estate. It is quite clear that this rent-charge is fixed by Act of Parliament, and can never more be raised or increased by the Duchy:—this rent is all the interest they take under the constitution, legally speaking; and although they may have been in the habit of taking fines on renewals, such fines have been taken without the authority of law, and consequently by exaction. The last Letters Patent were an entire new lease under the constitution; then what was the price paid for its purchase? just twenty-eight years' purchase. Supposing it to have been then the very first transaction the Duchy and the Clayton family had ever had together, I contend that it is a good lease and *estate* under the constitution; and that an equal price has been paid for it as for the purchase of a fee-simple estate; so that the Duchy can take no advantage of the alteration or change from a thirty-one years' to a ninety-nine years' determinable on three lives. It is an estate for which a valuable consideration was given, even considering it as an original transaction between the parties.

If there be no tenant-right of renewal annexed to the leases, then it must follow, That all the Parliaments from James I. down to the 16th Geo. III., under which the Claytons' last Letters Patent were granted in 1777, have been playing the part of swindlers, by first deceiving the tenants into an outlay of their capital, under special promises, and undertaking to give them good, sure, fixed, and indefeasible estates, such as would be sufficient to encourage them to outlay, and justify them in outlaying their capital in building and improving, and then defrauding them of all the benefit and advantage arising therefrom, and of all their outlay and industry, by seizing upon it all, to the ruin of their families and every other person who advanced money on security of the tenants' interest, and who are become interested in thus assisting them

with money to carry on their improvements. I will ask his Lordship if this can be the character of a British Parliament, or of a British constitution, which professes to protect life, liberty, and property?

I shall now endeavour, as far as my humble abilities and time will allow me, to point out what I think are the respective duties of the tenants, the officers of the Duchy, and of the ensuing Parliament, with reference to the constitution of the Duchy, and under the peculiar circumstances of the case.

And first—

AS TO THE DUTY OF THE TENANTS AND OTHERS INTERESTED IN THEIR ESTATES.

It is the duty of the tenants to renew their leases with the Duchy as often as occasion requires, and to act in such a manner as not to incur a forfeiture, to prevent the officers of the Duchy taking any advantage of their neglect. When they wish to renew, they are to communicate in respectful language, in the words of the Acts, their *desire to have their leases renewed;* and I should advise them to add the words, *according to the terms and conditions of the constitution under which they hold their lands, as originally established by an Act of Parliament, passed in the twenty-first year of the reign of King James I., and amended and confirmed by divers subsequent statutes.* They should employ their own Solicitor, whose duty will be,—first, to make the application in the terms above stated, and in a short time after, to apply to the Duchy Solicitor, for a draft of the intended renewed lease, and to examine it and compare it with the provision clause in the original Statute of 21st James, to see if all the provisions are strictly complied with, and to see that no covenants are introduced by the officers of the Duchy that are inconsistent with the true spirit and nature of the constitution,

or of the tenants' rights and interests under it; also, to see that the new letters-patent or lease is properly enrolled with the Duchy, according to the proviso for that purpose; and to see that it be in all respects a valid lease, agreeably to the provisions of the constitution, and such as they can make use of, either to sell or mortgage their estate and interest in, as their necessities might require. And I should rather advise the tenants to keep up their interest by taking renewed leases in reversion, before they suffer the term in their leases to run completely out; although, according to the proviso in the Acts, and of the 5th and 6th William and Mary, and by the entries on the Journals of the House of Commons at that period, it appears that they are entitled to their renewals, not only in possession, after their whole term has run out, but to fill it up in reversion, as they may think proper, at any period. They are not obliged to ask for their renewals as a matter of favour, but may demand the same as a *right;* yet the language made use of in the application ought to be respectful, as from a subject to his King, but so couched as to keep the tenant's right of renewal always in view. I *mention this, because* in the Clayton Kennington case, advantage was attempted to be taken, because the application for renewal was made in respectful terms, without adverting to or glancing at the right of renewal; therefore, I should advise the tenant in future to make use of the words by which the right of renewal is recognised in the Acts, and to *desire his lease to be renewed;* and not to ask for a renewal on reasonable terms, or for reasonable fines, because that also might be made use of as an argument that they have power to assess what fine they please, when in fact they possess no such power. I believe in my conscience, that they have no original legal right to take any fines, except on granting an original lease; or to demand any fine whatever (however small) for any renewal. I think that the original fine, paid on taking the first lease under the constitution, was, and is, a valuable consideration for the

absolute purchase of a perpetual estate in the lands contracted for, or, in other words, of a tenant-right of renewal of the lease in perpetuity, subject to the same rents as were payable to the Duchy before for the same premises; and that, therefore, the tenants were to have the renewed leases free from any other fines, and were to be allowed to enjoy the whole benefit and produce of their own outlay and industry, exactly the same as any other purchaser for a valuable consideration. There is on old law maxim, that what a man sows that shall he reap, particularly when that which he sows is upon his own soil, or soil of which he has the perpetual use, as the tenants in this case.

The origin of taking fines on renewals, in my humble opinion, commenced, not by legal authority, but by exaction, on the restoration of Charles II., when every arbitrary measure was resorted to, to raise money for that King to carry on his government; and which was submitted to at that memorable period, on account of the very great distress and necessity of the government, and the times; and the difficulty there was to get money to supply the wants of the state, and which has been submitted to ever since, not as a matter of right in the Duchy to demand them, but because they were reasonable compared with the tenants' improvements, and as it was a matter which did not interfere with the validity of the tenants' title, (as the increased rents did), and the fines being reasonable, and the tenants' interest improved, it has been submitted to ever since; but not as a matter of right originally, as none of the Acts empower the Duchy to take any fines on renewal, but merely the rents under the provision clause, which is all the revenue they are entitled to under the constitution, and which is considerably more than they had before the constitution was established. And it appears to me, that the Duke of Cornwall, the King, the Lords, and Commons, are all bound by this constitution, which is of their own making; and all that is directed to be reserved to the Duchy by the constitution,

is the same rents as were payable to them before this establishment took place, together with what other rents could be obtained from the waste lands, which before never yielded any rent. This was all the additional revenue, it was intended by the legislature, the Duchy should reap from the constitution; and was it not enough, to place the Duchy in a much better situation than they were before, without empowering them to seize on all the outlay and industry of the tenant? Whoever, I would ask, would have had any connection with the Duchy on those terms; or, however, could the property have been got improved, and the great public good have been effected, which experience proves has actually been effected, from having all the Duchy lands brought into a regular state of cultivation, by means of leases renewable for ever, and through the well-working of the constitution, so wisely ordained and established, if such had been the case? And yet the Duchy officers, taking Parliament unawares, have been suffered to manufacture Acts, and procure them to be passed, in downright violation thereof; and to destroy the resources of thousands of persons and families, who have become vitally interested under it. But it must not be forgotten, that the honor of the King and Parliament is pledged for its restoration, and for its future protection—they are the creators of the constitution and are bound to preserve it; it has been repaired, amended, restored, and protected by former Parliaments, when violated by the officers of the Duchy on former occasions, and, as a matter of course, there can be no doubt but they will still protect the tenant in the enjoyment of his vested rights, and who is, in point of fact, *a purchaser for valuable consideration of the tenant-right of renewal,* described in the Acts as a good, sure, fixed, and indefeasible estate. They are tenants or lessees, so far as the lease goes; they are purchasers so far as the estate in the lease goes, and which estate is, the tenant-right of renewal of the lease; that being the estate spoken of in the 1st Charles I., as having been contracted for with the tenants,

and which was sold by him to the tenants for valuable consideration; and this was what had previously been contemplated by Parliament to give him the benefit of.*

As it is the Duty of the tenant and his solicitor, to see that he has a good and valid lease warranted by the constitution, so it is necessary for the other persons interested as sub-lessees, mortgagees, or otherwise, to be satisfied that the tenant has effected his renewal from time to time, in the manner prescribed by the Acts, because their title depends upon his; and as often as the original lease is renewed to the first lessee under the Duchy, so often ought the sub-leases, mortgages, and other securities to be renewed.

As the officers of the Duchy have thought proper to procure the Acts of 33rd Geo. III., Geo. IV., and William IV. to be passed in direct violation of the constitutional rights and interests of the tenants and purchasers, and with a view to get the power over their respective estates all into their own hands, and to deprive the tenants of their justly vested rights and interests under the constitution, by demanding excessive fines on renewals, (when, according to the constitution, it appears the tenants are legally entitled to their renewals without payment of any fine whatever), it becomes the duty of every tenant to petition Parliament against such undue and illegal measures, and to pray Parliament to revise their proceedings, and to repeal those Acts which the Duchy officers have procured to be passed to defeat the tenants of their vested rights, and to restore the constitution to its original purity, and the tenants to their just rights and interests under it; and if they do not do this, every tenant will be in danger of having his estate taken from him.

I should advise the tenants to search into their grandfathers' coffers, to see if they can't find the old original

* See Memorial of the great contract between the King and Parliament in the reign of James I.

contracts and leases, or letters-patent, which their ancestors took from the Duchy; they are written on parchment, in court hand, and in latin, with a large seal hanging to them, and if they find any, to send them to London to be translated: these will shew there has been a valuable consideration given by their ancestors for their estates, and that they are entitled to be treated as purchasers, and not as mere tenants.

THE DUTY OF THE OFFICERS OF THE DUCHY POINTED OUT TO THEM.

You, the officers of the Duchy, are not to arrogate to yourselves a power which by no means belongs to, and was never meant to be given you, by acting in an oppressive manner towards the tenants; but your duty is to aid and assist them in the full and free enjoyment of their rights, interests, and privileges under the constitution; considering yourselves only as the mere instruments in the hands of, and subject to the control of Parliament, by whom you are employed for the purpose of putting in motion the machinery of the constitution, whenever the tenants may have occasion to call upon you for that purpose, *by desiring their leases to be renewed*; and to renew the leases to them accordingly, without let or hindrance. In other respects, you are the servants of the Duchy, but in this respect you are the servants of Parliament, and of the tenants. Your duty is, therefore, to obey the constitution and the Parliament, who are the parents and founders of it, and not to seek means to destroy it. If the tenants refuse or neglect to renew, you are to give them reasonable notice to come in and renew their leases *and estates*, in the same manner as a copyholder is called into the manor court, to take out his admission, which if he neglect to do, (after three proclamations,) he forfeits his estate to the lord. After thus giving a similar notice to the tenants, if they do not then come in and renew, they incur a forfeiture of their estates to the Duchy, and the Court of Chancery would perhaps not relieve them. You may then seize upon their estates; but before this is done, I contend, that you have no more power over their properties and *estates* than you have a right to enter any man's dwelling-house and take away his goods and chattels: and, I contend, that you might just as well, and with as much legal authority, have seized on any

nobleman's estate in the land, as to do what you have been doing in respect of the Clayton estate, which you have no power over, save and except that of demanding, and (on non-payment) of distraining for, the rents reserved to the Duchy, under the provisions of the Acts; for the relation of landlord and tenant was preserved by the constitution, merely for the purpose of giving you this power, and putting you in the same or much better situation than you were before. I am speaking so far as respects the surface of the soil, of which by the constitution the tenant is to have the perpetual use. The manorial rights and royalties you have power over, they are not brought within the pale of the constitution; but as to the surface of the land, or, in other words, the perpetual use of the soil, it was given up to Government to be got built upon and improved for the benefit of the public, on condition that Parliament should make provision, that the same rents which before were payable to the Duchy, should still be reserved to them, together with what additional rents could be obtained from the waste lands, which before yielded no rent whatever; to receive which rents is your duty, and there begins and ends your authority, so long as the tenant pays his rent, and commits no act of forfeiture. You will please to bear in mind, that there are two instances recorded by Parliament, in their own Acts and proceedings against your predecessors in office, who have undergone the censure of Parliament, for their oppressive conduct towards the tenants in former times, and that you now stand amenable to Parliament for your conduct towards the Clayton family and towards the tenants in general; and which ultimately may justly incur the displeasure of his Majesty. If the Parliament of William and Mary had power to call your predecessors in office to account, for their conduct in charging exorbitant fees for granting the leases, and thereby putting one-half of such revenue into their own pockets to the injury of the *public revenue*,* by taking less fines, and for which your

* See Journals of the House of Commons, 5th & 6th William and Mary.

predecessors in office could shew no authority whatever; surely the present Parliament have power to call upon you, to know by what authority you demand a fine of £72,000. for putting in one life only, when the fine before was only £468. thereby attempting unjustly to deprive the tenant of his renewal, instead of performing that duty which the constitution requires of you; and if the Parliament, in the due and proper exercise of their control, call upon you to shew by what authority you demand any fine at all, you will, I think, be just as much put to it as your predecessors were to shew they had a right to take exorbitant fees, and which they totally failed of doing.

The Parliament have also a right to call upon you, to know the reason why the fines you have taken (whether legally or illegally) have not been applied (as it appears they were heretofore applied) to the public treasury, for the public services of the state, instead of having been applied to the private revenue of the Duchy, which is limited to the rents only, as may be seen by the Acts, and which is a circumstance tending to prove that if any fines are due for renewals, they belong to the public, from whose outlay and labor they are produced, and not to the Duchy, who have been already compensated by the purchase-money taken, for granting the original *lease and estate,* and by the rents reserved to them under the provisions of the constitution.

I have no hesitation in saying, that it appears to me quite clear, that his Majesty has been led into a most egregious error, and that the officers of the Duchy will, by and bye, find themselves in such a scrape, as they will be very glad to get out of. It is not for them to control Parliament, and to subvert a constitution so wisely ordained and established, and which has been of such great and important benefit to the public; and to endeavour to destroy the same; and by so doing to destroy the vested rights of thousands of families, who are now become interested under it. The constitution

was given to the tenants for the express purpose of *making provision for themselves and families*, by their outlay and industry, which are the very words of the Acts; the Parliament, therefore, might with as much propriety permit the officers of the Duchy to overturn the constitution of the country, and to seize on any and every nobleman's estate in the kingdom, as permit them to do what they have been doing respecting the Clayton estate. I repeat that, the faith and honor of the King and Parliament stand pledged to support and protect the tenants' vested rights and interest given them by the constitution, and to which they are as much entitled as any nobleman is to his estate, or the king to his crown; for, as it appears to me, the tenant is seized of his tenant-right of renewal under the constitution, and no refusal of the officers of the Duchy to renew, can destroy that right. Renewals were ordained for the protection of the Duchy's interest, and in order to prevent the perpetuity of interest given to the tenant from working itself into a fee-farm. An Act was passed in the same year (21 James) to quiet persons in possession of Crown and Duchy lands who had paid no rent for sixty years—therefore it was necessary to guard against a similar occurence by renewals from time to time, in order to prevent the tenant from claiming the *property* of the soil, as well as the perpetual use of it.

THE DUTY OF PARLIAMENT POINTED OUT.

The Parliament of James the 1st having been the parents and founders of the constitution, and Prince Charles, (as the Duke of Cornwall,) a party to it, and the same having been amended, confirmed, and continued by all subsequent Parliaments, down to the 16th Geo. the 3d, under which the Clayton last Letters Patent were granted; and all which Acts of Parliament having promised, and undertaken, to give to the tenants such a good, sure, fixed, and indefeasible estate in the land, as should be sufficient to encourage them to an outlay of their capital (by way of investment) in building upon and improving the same, in the manner I have before mentioned; and as it is evidently upon the faith of such promises and undertakings, "that the tenants were to have such good and indefeasible estates," that they have been induced to lay out their monies in building and improving; it seems to me that the honor and faith of Parliament became pledged to the tenants to see that they, at all times, had such good and indefeasible estates so given them by the constitution, and to protect them in the full and free enjoyment of all the benefit of their outlay of capital and industry, against any violation of the officers of the Duchy, or any other persons, and of course in their full and free enjoyment of all those privileges of renewing and filling up their Leases, from time to time, in the way which is provided for the tenants by the constitution; and as all former Parliaments have uniformly felt it their duty, to act as the guardians and preservers of the constitution so established, and as the protectors of the tenants' just rights and interests under it, so it seems to me that the present Parliament will feel it their duty to act and do, and to follow the example that former Parliaments have set them; and in order to shew that this has been the practice, I will take leave to set forth three examples as precedents for them to go by.

shewing the control Parliament have always exercised over the officers of the Duchy whenever they violated the tenants' rights; or whenever the tenants have otherwise stood in need of parliamentary interference in their behalf. Indeed, without such control, there would be no security to the tenant, no encouragement for any persons to invest their capital in building and improving, and of course the lands must otherwise have continued in their barren state.

The first interference of Parliament, on the behalf of the tenants, seems to have been immediately upon the restoration of Charles II. A.D. 1660: for twenty years prior to this, the tenants were as sheep having no shepherd; their leases were running out, their estates running to ruin, and for the want of a proper person to renew with legally, their titles became such as they could not make any use of by way of borrowing money on the credit or mortgage of their leases, (the tenant-right of renewal being the estates in those leases bargained and contracted for), in order to go on building or repairing their houses, and improving and manuring their lands. Parliament, therefore, hastened to the tenants' relief, and about the first act they did after the restoration, was to give the tenants, *legal renewals of their leases,* according to the provisions of the Constitution. This Parliament of the 13th and 14th Charles II. acknowledges, that it was "by *means* of the leases the tenants had *fixed estates,* and so had been encouraged to improve and manure the lands, and had improved the same, and thereon laid out great sums of money in building and otherwise, *to the great advantage of the public.*" And the Act recites, that for twenty years before, no leases had been legally made, and that it had occasioned great inconvenience and injury to the tenants, who had suffered and were likely to suffer, if their *estates* were not well and legally renewed: it then confirms the constitution to the tenants in perpetuity, by making all leases made and to be made, good against all succeeding Kings and Dukes of Cornwall, who

should *thereafter* inherit the Dukedom; Provided they were made according to the rules and regulations of the 21st James, one of which rules was, that the leases should not be made for more than thirty-one years, or three lives at a time: so long, therefore, as those rules and regulations are complied with, so long the lease is a good and renewable lease in perpetuity. *This* is the principle I contend for, and which is evidenced by the Acts of Parliament, and by the Acts of all the parties; as well the tenants as the Duchy.

The second instance where the Parliament exercised their authority and control over the officers of the Duchy, arose out of the arbitrary measures which it was necessary to resort to, to raise money for the King to carry on the government with after his restoration, at which time the old rents, which, by the constitution, were directed to be reserved to the Duchy as and for their revenue, were increased beyond what the act allowed, by an order of the then Lord of the Treasury, in violation of the constitution. Of this increase of rent the tenants very justly complained, because it affected their title and was a violation of their vested rights and interests under the constitution, (for it is evident, if they had not had a vested interest, they could have had no right to complain). And the Parliament of 22d Charles, notwithstanding the great difficulty there was to raise the King money, found themselves under the necessity of listening to their complaints, and not only caused their grievances to be immediately redressed, but amended the constitution in no less than eight different places, and placed a barrier around it to prevent the officers of the Duchy from ever violating the same again; but notwithstanding this, the time is now come that they have again found means to violate it, and the energies of Parliament are again in requisition for the protection of the tenants. The leases being the means by which the tenants were to have and enjoy the vested estate given to them, this Act, and all subsequent Acts from the 22d Charles II. down to the 16th Geo. III.,

enact, that all leases made, or to be made, otherwise than as the constitution allows, *should be null and void*; notwithstanding which, the Duchy officers have contrived to procure Acts to be passed to do away this barrier, and to enable them to grant leases in direct violation of the constitution, and have got provisoes and powers introduced to enable them to seize upon the just and vested rights and interests of the tenants, and to deprive them and their families and dependants of all their outlay and industry, which, in consequence of the faith and reliance the tenants placed in the promises and undertakings of Parliament, they have expended on their estates.

The third case in which the Parliament found it necessary to exercise their authority and control over the officers of the Duchy, is the case which happened in the reign of the 5th and 6th William and Mary; where, as it appears on the Journals of the House of Commons, and by an Act then passed, the officers of the Duchy had been in the habit, in some instances, of charging the tenants one half as much for their fees, as they took for the fines on renewals, to the great detriment of the public revenue;* and by which practice, the tenants are said not to have been able to pay so large fines as otherwise they might have done; and in the Act it says, "this practice prevented the tenants *from renewing their "leases so often as otherwise they would have done*, which shews they had the power of renewing their leases as often as they liked; and it is said, that it occasioned many of the tenants to let their leases run entirely out before they renewed again. To remedy this grievance, the Parliament of William and Mary interposed their authority, and controlled the officers, by introducing a clause in the Act, restraining them from taking such excessive charges. They having summoned the officers before them, who could shew no authority whatever for taking such excessive fees, reproved them for their op-

* See Journals of the House of Commons, 5th & 6th William and Mary.

pressive conduct, and restricted them to a certain sum, under a severe penalty if they dared to take more. It appears that the Duchy officers were, at this time, taking a fine revenue to themselves, even in many instances to the one half of the revenue of the Duchy. The time is now again come, when it is absolutely necessary to call again for the assistance and authority of the present Parliament, on the behalf of the oppressed tenants of the Duchy, the Clayton family in particular, and all interested under them; to the amount of not less than four or five hundred persons; some more immediately, others more remotely interested. And it is to be hoped, that the present Parliament will act as their predecessors have done prior to the 16th Geo. III.; and although the Parliaments of late years (since that period) seem to have lost sight of the constitution as established by 21st James, yet that the present Parliament will institute a strict Parliamentary enquiry into the original true intent and meaning of the constitution, and the rights and interests of the tenants under it, and take immediate measures for restoring the constitution to its original purity, and the tenants to their just rights and interests under it; and also cause a strict enquiry into the conduct of the officers of the Duchy relative to their attempt at the destruction of the constitution so wisely ordained and established, and thereby to *defeat* the tenants of their *indefeasible* estate given them by the constitution, and by all the acts passed subsequently for amending and confirming the same; and in so doing, I will take the liberty of suggesting to them the propriety of

1.—Calling upon the officers of the Duchy to shew, (if they can,) any legal right or authority they have for taking any fines, on renewal of any lease, after the fine or consideration-money taken on the first or original lease granted on the purchase thereof.

2.—Also, to shew by what authority they demand a fine

of £72,000. for putting in one life on the Clayton estate.

3.—Also, to shew, (if they can,) what other interest the Duchy have in the Clayton estate, beyond their yearly rent of £16. 10*s*. 9*d*.; and if they are not restricted from raising or increasing that rent.

4.—What right or authority they have to refuse a renewal to any tenant at any time he may *desire* his lease to be renewed; they being only the servants of Parliament to keep the machinery of the constitution at work, by renewing, whenever the tenants *desire their leases to be renewed:* and what right they have to stop the machinery of the constitution from going on, as it always has done, from its first creation, without clogging the wheels with a £72,000. weight.

5.—By what authority they presume to grant the Clayton estate out to others, when the Clayton family are yet seised of their tenant-right of renewal, not having done any act to forfeit that right.

6.—To call on the officers to produce and shew forth the counterparts of the original contracts made by Prince Charles with those persons (tenants and purchasers) with whom he first contracted for *leases and estates;* and also the counterpart of the first leases, granted in pursuance of those contracts; in order to compare the price given with the quantum of rent reserved; being the most rent that could, in its then unimproved state, be obtained for the same, and by which it may be clearly seen, that a bonâ fide valuable consideration was then given for the sale and purchase of a tenant-right of renewal, *alias*, a good and indefeasible estate. And also the counterparts of all subsequent leases, or as many of them as may be necessary, to see if the

same practice has not continued from that period down to the 16th Geo. III., before the constitution began to be again violated by the officers of the Duchy.

7.—Also, any petition or application to Parliament from the tenants, to have their leases renewed on the restoration of Charles II. about the year 1660.

8.—Also, the order of the Lord Treasurer, between the Restoration of Charles II., 1660, and the 22nd Charles II., whereby the original rents were increased, contrary to the vested rights of the tenants.

9.—Also, their petition or complaint to Parliament thereon.

10.—Also, the order of the Treasury to restore the same back to the ancient rents, on payment of a composition, and the terms of such composition as mentioned in 22nd Charles II.

11.—When the practice of taking fines on renewal commenced.—How long those fines were appropriated to the public revenue of the state; when they ceased to be thus applied; and how long the same have been applied to the private revenue of the Duchy.

12.—How much money (if any) the Duchy ever contributed towards the building upon and improving the lands, or any part thereof.

13.—If there are any covenants in any of the leases to compel the tenant to build and improve, or any for the protection of the land, as in leases where the property in the land remains in the lessor.

14.—What has been the increase of the Duchy revenue, from the year 1622, the time the constitution was established, up to the present time, showing the two amounts the rents which were paid prior to the constitution, and the rents which are now paid.

15.—To what cause is this increase attributable, if not from the good working of the constitution.

16.—What were the covenants in the leases granted prior to the 21st James, and if the form of the leases were not immediately afterwards changed, and all restrictions abolished; and if the tenants, since the constitution has been established, have not been at liberty to sell, mortgage, and do what they pleased with their estates, without any control from the Duchy.

TO CONCLUDE.

From what I have laid down, I will leave it to any lawyer to say, if it is not quite clear that this constitution so established is become part of the law of the land, and by which law the tenants of the Duchy (so called, but who in fact are purchasers for a valuable consideration, both as respects their outlay of capital and the consideration-money they pay on purchasing their first *lease and estate* in that lease) have a vested interest in their respective estates, which they are only said to hold under the Duchy, because it is part of the constitution that they should so hold the good and indefeasible estate given them in the lands; or, in other words, to have the use of the soil in perpetuity for building and improving purposes, by means of renewable leases. Then, I say, the tenants have that *perpetual estate* and interest therein, (which was recommended by Mr. Glanvylle to be given them,) and which the Duchy can by no means deprive them of; and that such perpetuity of interest was appointed by the constitution to be had and enjoyed by the tenant, by *means of such renewable leases*, otherwise the perpetual estate intended to be given the tenant, would have amounted to an alienation of the property, which from its nature and tenure could not be alienated; and that the leases or letters-patent made from time to time are nothing more than

the machinery of the Acts, by which the constitution is made to work, and are not the *end and design* of the legislature, but the *means* only by which that end and design was to be effected and carried into execution; the end and design of all the Acts being, to give to the tenants a *vested interest* for building and and improving purposes; it being necessary for the purpose of getting the lands built upon and improved at the tenants' expense, that he should have all the interest that could be given him, short of alienation; for otherwise, the lands must have remained in their barren state. That all the interest the Duchy have now in the lands under this constitution, consists of the rents which are especially directed to be reserved to them by the constitution, as a condition for giving up the land to the public to be improved, and by which they are placed in a much better situation then they were before the making of the constitution, which not only gives the Duchy a title to all the rents they before received, but to all rents to be made from waste lands, which never before yielded any rent; and thus the Duchy have received all the benefit of the constitution which the legislature intended they should receive. And all the power the officers of the Duchy have over the tenants' estate under the constitution, is to receive and recover those rents, and there ends all their power, and there ends all the revenue of the Duchy, all former powers and interests having been abandoned, surrendered, and given up, and merged in the constitution, so established by Parliament, and which was so established by and with the consent of the Duchy. That the distinct interest of each party is plainly defined and pointed out by the Acts of Parliament, for when they speak of the interest of the Duchy, it is called their *revenue* arising from rents only, and the lands and houses are called *the lands and houses of the tenants.* And that as regards fines taken on renewal; no such fines are provided for the Duchy by the constitution, and of course none are due to the Duchy by the law of the constitution, nor could it be intended there should

be any fine for renewal, after the tenant had fairly bought and paid for his first lease and *estate*. And that the origin of taking fines on renewals commenced on the restoration of Charles II., when every arbitrary means were used to exact money from the tenants and others, with which to carry on the government, and that such fines have therefore no legal foundation. I say that the tenants have as good a title to their respective estates, as any nobleman has to his estate, or as the king himself has to his crown; and that, therefore, the acts of the Duchy officers in seizing upon the Clayton estate and granting it out to others, are oppressive and illegal, and cannot be justified by law. All I want, as an act of justice to the Clayton family as well as every other tenant of the Duchy, is a strict Parliamentary enquiry into this most important of all cases, as it involves a principle of the constitution of the kingdom, *viz.* the protection of the tenant's estate, to which he is by the laws and constitution of his country, as well as by the oppressive circumstances of the case, so justly entitled.

And here, I hope I may be allowed some little recapitulation, in order to make myself perfectly understood. It seems to me, that under and by virtue of this constitution, which I have endeavoured to bring to light, and to explain in the best manner my poor abilities will allow, the Clayton family, as well as every other tenant on the estate, are seized or otherwise possessed of that very same *perpetual estate*, which that great man, Mr. Glanvylle, (who at the time the constitution was being established was the leader of the House of Commons, and who attended the making and framing of the constitution,) said was absolutely necessary to be given to the tenant, to prevent the lands any longer remaining in their barren state, and in order to encourage the tenant and purchaser to build and improve. And it seems to me, that it was ordained and provided for by the constitution, that this perpetual estate (for the purpose of enabling the Duchy to receive and recover their rents as usual, together with what other additional rents

could be obtained from the waste lands, which never before had yielded any rent) was to be had and enjoyed by the tenant and purchaser thereof, by means of renewable leases, and that this perpetual estate so given, and so to be had and enjoyed, is that *fixed estate* spoken of in the 13th and 14th Charles II., which cannot be otherwise defined than as a perpetual right of renewal of those leases; and that the tenants were intended to have this benefit of renewal, (gratis), the premium paid by the tenant, on his purchasing his first lease *and estate* under the constitution, being a valuable consideration given for such perpetuity of interest, subject to the then present rents; or, in other words, for such a good and indefeasible estate in the lands, as should be sufficient for building and improving purposes; now when the very heavy outlay the purchaser of such lease and estate must necessarily be put to, in building on and improving waste lands, is taken into consideration, that of itself makes it evidently appear to me, that such perpetual right of renewal was intended by the constitution to be continued to the tenant from time to time, as *"the tenants desired their leases to be renewed;"* and those words being found in the Acts, seem to me to be *a recognition by the legislature of such tenant-right of renewal having always been exercised* by the tenant. Then, I say, the tenants being so seized of, possessed, or otherwise entitled to this right, by virtue of the constitution, it is out of the power of the officers of the Duchy, or any one else, legally to dispossess them, or defeat them of that right, which is and was intended to be an *indefeasible* right, vested in them by the constitution, and which has been fairly bought and paid for. And it seems to me, that the tenant being so seized, he has the legal estate, or right of renewal, remaining still in him, and upon which I conceive an ejectment might be well supported; and, notwithstanding all the officers of the Duchy have done to defeat the Clayton family of their legal right of renewal, I hold that they still have that right

in themselves, of which the Duchy cannot and ought not to seek to deprive them: and that as the Duchy officers have refused to grant them a renewal under the constitution, they have a right to apply to the makers and founders of it for their remedy, *viz.* to Parliament; and (as I have before said) I consider the Clayton family have as good a title to this Kennington estate, (of which the officers of the Duchy have so unjustly attempted to deprive them,) as any nobleman has to his estate, or as the king has to his crown; and it further appears to me, that all the Acts of Parliament, up to the 16th George III., (under which the letters-patent were granted to the Clayton family,) are Acts passed for the purpose of giving the tenants a vested interest in their estates in perpetuity, for the purposes of building and improving; and that it is both the duty and interest of the Duchy to grant the leases to the tenant, because, if they refuse to do so, the tenant has a right to hold the estate against them, without being subject to the payment of any rent, the lease being the means by which the Duchy are enabled to receive and recover the rents directed to be reserved to them under the constitution. They have power to grant the leases, and are obliged so to do, by the terms of the constitution; but they have no power to refuse it, without being subject to the censure and control of Parliament, for attempting to stop the due working of the constitution; for, suppose the officers, when the constitution was in its infancy, had acted in the same arbitary manner, the consequence must have been, that all improvement would have been checked at once. It is contrary to the spirit of the constitution so to act; and such a power must have defeated the intention of Parliament, who established and ordained it, and the lands must have still remained in their barren state.

I think that when this important case comes properly to be laid before Parliament, it will be clearly seen that the Clayton family are justly entitled to the thanks of the country, for having been the cause of 1400 substantial houses being built

on this Kennington property, (which formerly was nothing more than a mere marsh, covered with water for many months in the year), instead of being treated in the manner they have been by the officers of the Duchy; and that the officers of the Duchy have merited the just censure and indignation of Parliament, for having, in defiance of the constitution, seized upon this property, consisting of 1400 houses, and granted it out to others, without having expended one single farthing towards the improvements made, and in order to defeat the Clayton family of their just and vested rights; and this, after all former Parliaments have been exciting and encouraging the tenants to outlay their capital in building, by repeated promises, and undertaking to give them such a good, sure, fixed, and indefeasible estate, as would encourage them so to do, and in actually giving the tenants the perpetual estate which Mr. Glanvylle said was absolutely necessary for the purpose, and upon the faith of having which, the tenants have expended their money.

My time being very fully occupied on other business, during the day, I have only been able to devote my evenings occasionally to putting my sentiments on this most important case on paper, and the many intervals which have thus necessarily occured, will, I trust, plead my excuse for all inaccuracies of expression which may be found in these pages. I can truly say, my object has not been to give offence to any one, but merely to make use of that language, which I thought was needful to throw a clear light on the subject, and to convince Lord Brougham (for whom I entertain the highest respect), and all who may think it worthy of perusual, that he, with the learned gentlemen who conducted the case, have all entirely mistaken the true nature of it—having mistaken the leases for *the end and design* of the legislature, instead of being the *means* by which that end and design was to be carried into execution.

The tenants do not attempt to claim their title under the *leases*, but under the *constitution*, which gives them a *perpetual estate* to be had and enjoyed by *means* of those leases. My object is to save, not only the Clayton estate from the illegal grasp of the Duchy officers, but to save and deliver many hundreds, perhaps thousands, of persons and families, who are become interested in this property under the constitution, from oppression and ruin; and I trust that what I have said will convey some useful information to the profession, which before they were not aware of; I trust, too, that it may be found useful to the tenants, as well as to their guardians and protectors, (the Parliament); and, lastly, to the officers of the Duchy, whom I strongly recommend the perusal of it to, as a means by which they may come to a proper knowledge of their duty, and of the extent of their power, that they may not overstep the same in future, and which is confined to the receipt and recovery of the rents reserved to the Duchy by the constitution, and which is all the power and control they have over the estate, that being the condition upon which the lands were originally given up to the public, to be got built upon and improved at the tenant's and purchaser's expense, for the good of the public, and for the benefit of themselves and families, and not for the benefit of the Duchy, as is vainly and unjustly contended for; for is it at all likely, any person would purchase the liberty of ruining himself and family, for the benefit of others?

JOHN HAINES,

No. 38, Tonbridge Street, New Road, London,

(Formerly a Country Solicitor.)

March 4th, 1835.

THE END.

J. BETTS, Printer, 7, Compton Street, Brunswick Square.

ADDITIONAL OBSERVATIONS.

I take it to be quite clear, from what I have already laid down, that the Duchy lands were given up to Government to be built upon and improved, for without which it is evident they still must have remained in a barren state.

Now, as a corroborating proof that this was really the case, it appears, on reference to all the Letters-patent granted to the Clayton family, that the chief officers of Government were a party to the leases which are granted by the Duchy (*by and with the advice of the First Lord of the Treasury, and the Chancellor of the Exchequer, and four Commissioners of the Treasury.*)

This, in my humble opinion, completely establishes what I have contended for; for, if the lands had not been so given up by the Duchy to Government, *where was the necessity of making the chief officers of Government a party to the leases?*

The leases which were granted prior to the establishment of the constitution, were granted *by the Duchy alone,* and the very form of the lease was changed at this time; all which proves, that the perpetual beneficial use and occupation of the land for building and improving purposes, passed out of the Duchy, through Parliament, to the tenant, and which was to be had and enjoyed by means of renewable leases, which were purchased by those who had capital to invest, for the benefit of themselves and families, for *valuable consideration, subject to the same rents payable to the Duchy as theretofore.*

At this period, too, (as appears by reference to an Act then

lately passed in the same Session of 21st James I.)* part of the waste lands of the Crown and Duchy had got into the hands of the subjects, and which had been held by them and their ancestors for a long series of years, without payment of any rent; and this Act quiets all persons who had been so in possession for sixty years, in the peaceable enjoyment thereof for ever thereafter, and bars the Crown and others from any future claim. This was for the purpose of encouraging improvement, and bringing the lands into cultivation; and operated to encourage others who had got so into possession, but who had not enjoyed those lands for sixty years, to come in and take leases under the present constitution, as respects the Duchy lands.

It seems the Duchy officers were perfectly aware of all this, because I see they have by their three last Acts, which they have procured to be passed, studiously endeavoured to get rid of the authority of Government in this respect, and to get all the power of granting the leases into their own hands, by getting it enacted, that all leases should be made *by the officers of the Duchy only*, without the advice of the Officers of Government being a party to the grant.

So that they are not content with endeavouring to destroy the constitution, which has so much benefited the country, and with endeavouring to destroy the tenants' right of renewal under it, by seizing upon their property, but must endeavour to get rid of the authority and power of Government and Parliament over the estate; and that, after Government have been the means of getting all the lands built upon and improved. They now want to deprive them of any authority, and to take the estate back again into their own hands, and deprive the tenants and purchasers of all their outlay and industry, to the ruin of hundreds and thousands of persons and families; and that, too, after the Government and Parliament have from time to time done every thing they could,

* See 21st James I. c. 3.

to induce the tenants and purchasers of those renewable leases to lay out their money in building upon and improving the lands for the benefit of themselves and families, and which leases Prince Charles was originally permitted to make and sell to them, and which practice has continued down to the present period.

Notwithstanding all which the Duchy officers have actually seized on the property and granted it out to others; but, surely, if ever there was a case which calls more loudly than another for relief, and for a strict Parliamentary inquiry into, this is that case. And I trust that Parliament will not yield their authority, but will see that the Clayton family, as well as every other tenant and purchaser on the estate, has justice done them, as they are bound in honour to do.

It appears clear, that it was *by and with the advice of Government*, these renewable leases were first established, as well as by and with the consent of the Duchy, (the necessity of which was so evident), and that the intention of Parliament was, to affix a tenant-right of renewal to the leases; or, why does the Legislature in all the Acts recognise the *exercise* of that right by the tenant, by admitting that the tenants came to the Duchy and to them, and *desire their leases to be renewed?* Or, why do all the Acts declare that the intention of the Legislature was to give to the tenants, not only a good, sure, fixed, and indefeasible estate, but such an estate *as would be sufficient to encourage them to lay out their money in building and improving?* Or, why do the Acts passed from time to time, make all leases made and to be made, good against all succeeding Dukes and Kings *who should at any time thereafter* come to the Duchy, but to give perpetuity to every lease granted? Or, why do the Acts provide that the leases should be made for an indefinite period, *i. e.* for thirty-one years, or under, or for one, two, or three lives, if they were not intended to be renewable? How could such a lease, as either of those, be a sufficient interest to encourage a tenant to lay out his

money? Or, would any man, for instance, take a lease for one life, and lay out his money upon such a precarious and uncertain tenure, without such tenant-right of renewal? Is it reasonable to suppose, the Parliament or Government should be weak enough to offer, or the tenant weak enough to accept, such a precarious tenure, for such a purpose? Do not all the Acts declare that the renewals were to be effected for the benefit of the tenant and his family? Do not they all invite him to renew his lease and *estate* for that purpose? Could it ever have been supposed, that it was the intention of Government to procure an Act of Parliament for the purpose of getting all the money out of the tenants' pockets, by promising that if they would but lay their money out in building upon and improving the property, they should be sure to have good, fixed, and indefeasible estates, such as would encourage them to outlay their capital in building and improving, for the benefit of their families, and such estates as Parliament itself should never be able to defeat. And, after the tenants had so laid out all their monies, could it ever have been the intention of the Legislature, that the officers of the Duchy should have power to seize on all the produce of their outlay and industry, and without either mercy or consideration, turn them all out of possession, in the manner they have lately done? How came the words *fixed estates* in the Act of 13th and 14th Charles II., if it were not by means of these renewable leases the tenant had those fixed estates; for they could not be said to have fixed estates by means of leases which are declared by the subsequent Acts, *not to be sufficient for the purpose?* Why does the Act of 5th and 6th William and Mary recognise the tenants having it in their power to renew their leases, *when and as often as they liked,* if it were not a renewable interest the Legislature meant to give to the tenants? Why is it there said, the arbitrary conduct of the Duchy officers, in charging them such enormous fees for their leases, kept them

from renewing "*so often as otherwise they would have done?*" What is this but a recognition of the right to renew? Why is it said they allowed their leases *to run entirely out before they renewed again,* but in order to shew the tenants had a right to renew even after these terms were expired? What is this but another admission of the right to renew? Why was the £16. 10*s.* 9*d.* a year made rent-charge of, and the Duchy for ever afterwards barred from increasing it again, if the tenant had no further interest in the estate after the expiration of his thirty-one years? And if this estate and interest had not been a renewable estate and interest, why do the Acts make good and confirm all leases made forty and fifty years before, which must have long before expired, had they not been renewable; and why do all the Acts call upon and encourage the tenants to renew their leases and estates and interests, for the benefit of themselves and families? not for the benefit of the Duchy; and not with the view to give the Duchy officers the opportunity, as soon as the tenants had spent all their money, (to make provision for themselves and families,) to seize upon the benefit and produce of their outlay and industry, and to turn them all out of doors, and out of possession of their houses and their homes; and which Parliament recognise and designate as the tenants own property. Can this, by any reasonable construction of the Acts, be possibly considered to have been the intention of the Legislature, or of Government, in getting this constitution established? The very bare idea of such a construction ever being attempted, would effectually have stopped all improvement. Can it be possible that Parliament or Government can so act towards the tenants, who have been thus drawn in to spend all their substance in the improvement of the property? Can any man of common sense and reason bring himself to believe that such is the character of a British Government, or of a British Parliament, so to act towards persons standing more in

the situation of purchasers than of tenants? And, let any man say if a lease for thirty-one years or under, or for one, two, or three lives, is a sufficient interest to give to a tenant, to encourage him to invest his money for the benefit of himself and family in building and improving, without a tenant-right of renewal being affixed thereto. It really seems to me, that if persons would but open their eyes, and make use of their understandings, they might see that the tenant-right of renewal was created by those Acts, and that this is the good, sure, fixed, and indefeasible estate which is spoken of in all the Acts, and none other; for the three last Acts themselves negative the possibility of its being any other, although they were passed with an intent to destroy it; and it never can be denied, but that the tenants were to have such a good estate and interest as *would* be sufficient for the purpose; and if a thirty-one years or three lives absolute be declared *not to be sufficient*, it must of necessity be some larger estate that is meant, which can be no other than a *tenant-right of renewal.*

I view this case not as a case between mere landlord and tenant, but as a case between vendor and purchaser: viewing it in this light, you make all the Acts establishing, amending, and confirming the constitution, not only consistent with themselves, but the Acts of the parties are all consistent with that view. Any other view renders the Acts all at variance with themselves, and at variance with the acts of the parties; and the acts of the parties all tend to show, that a tenant-right of renewal was that estate which was affixed to the leases, and which has answered the purpose it was intended for, by getting the lands built upon and improved for the benefit of the tenants (so called) and their families, and, ultimately, for the good of the public; but it was never intended that the tenant and purchaser should spend his money for the benefit of the Duchy, who had already derived all the advantage intended them, in the rents to be got from

the waste lands, which before had never yielded them any rent whatever.

The constitution had scarcely a fair beginning, owing to the civil wars, and the disturbed state of the times, which immediately followed the establishment of it; but I cannot help being of opinion, that those leases, when they were first established, were looked upon as leases under Government, and upon the credit of which, persons might as safely invest their capital as upon any other Government security; and that the honor and faith of Government stands as much pledged to the purchaser of those leases, as to those who invest their capital in the public funds, or on any other Government security.

There is one more argument which has just struck me in favour of the tenant-right of renewal; and that is,—if the Parliament had only intended to have enabled the King or Duke to grant leases, for any term not exceeding thirty-one years, or three lives, for the purposes of building and improving, it would have been done by the enacting part of the statute, which would have simply enacted, *that it should be lawful for the Duke or King, and he was thereby empowered,* to make such leases, for not exceeding thirty-one years or three lives, provided the same rents were reserved to the Duchy. But instead of doing which, IT ORDAINS, ESTABLISHES, AND ENACTS that all leases made and to be made, should be good against the Duke and King, and all others, who should *at any time thereafter* have, inherit, or enjoy the Duchy; not only according to the limitation contained in the Charter of Edward III., but by force and virtue of any Act of Parliament, or other limitation whatsoever; thus making all leases perpetual leases, provided they were not made for more than thirty-one years, or three lives, or some term determinable upon three lives, in order to make them renewable leases; for if a lease made for thirty-one years or under, or for one, two, or three lives, is declared to be good

against all succeeding Kings and Dukes, who shall *at any time thereafter* have, inherit, or enjoy the Duchy, not only according to the limitations contained in the Charter of Edward III., but by force or virtue of any Act of Parliament, or other limitation whatsoever; such leases must of necessity be good as long as there is any person to inherit the Dukedom, and as long as there is any other limitation in existence; and it is the making of the leases agreeably to the provisions of the Acts which give them that perpetuity; for no one would venture to contend, that a lease for an undefined term of thirty-one years, or under, or for one, two, or three lives, in the disjunctive, could by any possibility yield or afford to the tenant that good, fixed, and indefeasible estate, as should be sufficient to encourage him to outlay his capital in building and improving, unless it had been so made a renewable lease, and unless the right of renewal had been vested in the tenant by the Acts, under the description of such a good, fixed, and indefeasible estate, as would be sufficient for the purpose intended, and which estate seems to be nothing more or less than a TENANT-RIGHT OF RENEWAL, which is as good an estate in law as any other estate of a different description can be.

This perpetuity is created from the very opposite principle to that which is not favoured by law, being a perpetuity created for the benefit of those who were to succeed to the inheritance, and not to their injury. It was also created for the benefit of the public, as is manifest by the 13th and 14th Charles II., where it is said, it was by means of those (renewable) leases, the tenants had fixed estates, and so had been encouraged to lay out their money, for the good of the public; for, it is impossible any encouragement could be given them by leases for thirty-one years, or under, or for one, two, or three lives, which could have been *no* encouragement whatever, without the tenant-right of renewal being annexed, and which is the good and indefeasible estate and interest

vested in the tenants and purchasers, by and under the constitution.

There is not only moral equity in this case, but the case is abundantly full of legal equity; and I think it is morally impossible for any person, who knows any thing about the construction of Acts of Parliament, to read those Acts, and compare them one with the other, to arrive at any other conclusion than that there is a *legal* vested perpetual right of renewal in the tenant; the perpetual estate which Mr. Glanvylle, (at the time the measure was being concocted,) said was absolutely necessary to be given, in order to get the lands improved, and preventing their remaining in their barren state.

J. H.

10th April, 1835.

THE END.

J. BETTS, Printer, 7, Compton Street, Brunswick Square.

THE

JURIDICAL ARGUMENT

OF

THOMAS GEORGE WESTERN, Esq.

(*of the Middle Temple,*)

AGAINST THE DECREE OF

THE RIGHT HON. LORD BROUGHAM AND VAUX,

LATE LORD HIGH CHANCELLOR OF ENGLAND,

UPON THE CASE OF THE LATE

Sir WILLIAM CLAYTON, Bart.

AND

THE DUCHY OF CORNWALL;

WITH MR. WESTERN'S OPINION UPON THE RIGHTS OF THE YOUNGER CHILDREN OF SIR WILLIAM CLAYTON, AND, CONSEQUENTLY, UPON THE RIGHTS OF ALL HIS LESSEES OF THE KENNINGTON ESTATE.

LONDON:

HOUGHTON AND CO. 30, POULTRY; HENRY BUTTERWORTH, 7, FLEET-STREET; HOUGHTON AND GAUBERT, 119, CHANCERY-LANE; AND JOHN BETTS, 7, COMPTON-STREET, BRUNSWICK-SQUARE.

1835.

THE

OPINION OF THOMAS GEO. WESTERN, Esq.

ON

THE CASE

OF THE LATE

SIR WILLIAM CLAYTON, Bart.

AND

THE DUCHY OF CORNWALL.

THIS is a new and extraordinary Case, of very great value, and depending upon a question, to answer which there is no precedent upon record.

The importance and value of this question, the magnitude of the documentary evidence, and the judgment of the late Lord Chancellor (Brougham) against the Claim, I confess (notwithstanding all my experience) makes me enter upon the Case with considerable anxiety.

I have, however, at the earnest *solicitation of Mr. Haines* (without whose valuable aid I would not have undertaken, nor could I have gone through it), devoted above two entire months to the investigation of the evidence, which I have given the best and fullest consideration I am able.

I have traced not only the statute law relating to the Duchy of Cornwall, but also the debates upon the introduction of each Bill, as far as I could; also the reports of the Committees in both Houses of Parliament, so as to ascertain, if possible, *without doubt*, what the real intention of the Legislature was with regard to the right of the Tenants.

The first notice I find taken of the Lands belonging or annexed to the Duchy (of which the Manor of Kennington forms part of the latter class), is in the reign of James I., when Sir Edward Coke (the then Chancellor of the Duchy) considered it necessary, from the peculiarity of the tenure, to place the Estates under the control and direction of the Parliament, so that the Lands (many of them, including those in question, being unproductive Waste Lands and Marshes) might become tenanted and be improved, and the Tenants be induced to expend money in improvements, by giving them good, fixed, and indefeasible Estates, which the Legislature only could do.

I find, that in every reign the Bills relating to the Duchy Estates have been always introduced *with the supplies*, and referred specifically to a Committee.

Upon the introduction of the first Bill, in the 18th James I. (1620), for establishing a certain and fixed tenure between the Duchy and its Tenants, much discussion took place. There is no roll of Parliament existing of this year; the Act is not, therefore, to be had. I collect, however, from the Journals of the Parliament, that the Prince Henry having avoided many grants made by Queen Elizabeth of the Duchy Lands, of which the Tenants had complained, that in order to confirm and make sure the Estates of the Tenants, and to strengthen the Leases of such as should take them of the Prince Charles, a Bill was brought in on the 27th February, 1620, and passed, with the subsidies, by the Lords, on the 20th March following, entitled, "An Act to enable "the Most Excellent Prince Charles to make Leases of Lands, parcel "of his Highness's Duchy of Cornwall."

This Bill was not, however, considered sufficient to protect the rights of the Tenants, nor, indeed, to extend to the Manor of Kennington, which, as I before have said, is *annexed to the Duchy*. Sir Edward Coke, therefore, on the 3d March, 1623, brought in another Bill to the House of Commons, entitled, "An Act to "enable the Most Excellent Prince Charles to make Leases of "Lands, parcel of his Highness's Duchy of Cornwall, or *annexed* "*to the same.*"

When this Bill passed, a special minute was directed to be entered upon the Journals of the House, to show what was the

intention of the Legislature to give faith to and encourage those who might then be or become Tenants to improve the Lands. The entry is as follows:—See Journal of the House of Commons, vol. i. p. 680.

> " That this law appropriate only to the person of the " Prince, not to the King, in time of vacation of the Prince, " or to succeeding Princes."
>
> " There must be *a perpetual Estate*, or else the husbandry " of that country will fail, and the Lands grow barren."
>
> " To have this law made so as Leases may at all times " be made good."

This Statute of the 21st James I., cap. 29, recites, " That the then Duke of Cornwall, Prince Charles (afterwards Charles I.) was seised of the Dukedom and the possessions thereof, of a state of inheritance under a special form of limitation, differing from the ordinary rules of inheritance of the common law, whereupon questions grew whether Leases made by the Duke should be good and effectual in law longer than his life." For avoiding which doubt, and to the end that such persons as had taken, or should take Leases from the then Duke, might be sure to have *good Estates, and so be encouraged* to bestow charges in the building and maintaining of their houses, and good manuring of the Lands so demised, or to be demised to them, " *It is ordained, established, and enacted,* That all Leases then made, or to be made by the then " Duke, should be good and effectual in law according to their " purport and content against the then King, and against the then " Duke, his heirs and assigns, and all and every other person or " persons that should inherit or succeed to the Duchy, provided " that every such Lease in possession be, or should be made, but " for three lives or fewer, or for thirty-one years or under, or some " other term of years determinable upon one, two, or three lives, " and not above; and *if such Leases be made in reversion,* that then " the same, together with the Estates in possession, did not exceed " three lives or thirty-one years, and not dispunishable of waste, " and so as upon every such Lease be reserved *the ancient or most* " *usual rent,* or such rent as had been paid for the greater part of " twenty years before making the Leases, and where no such rent

" had been reserved, then a reasonable rent, *not under the twentieth* " *part of the clear yearly value.*"

This was as much as the Parliament could possibly do for the Duke in aid of the Charter of Edward III., under which he held the Duchy; any power beyond this would have been a fraud upon the succeeding Duke. The reservation of the *ancient or most usual rent,* and not the best or most improved rent, contemplated the accustomed fine to be paid by the Lessees upon renewal, so that the Duke, for the time being, should always have a revenue.

The debates in the House of Commons, upon this Bill, are strong collateral evidence of the intention of the Legislature; the Committee having insisted and recorded the intention, that " here " there must be a *perpetual Estate,* or else the Lands will grow " barren, and that this law must be so made as Leases shall at all " times be made good."

Previous to the passing of this Statute (*i. e.,* in 1617) a Lease had been granted of this Estate to Sir Noel Caron, by the then Prince Charles, for twenty-one years, at the ancient rent of £16. 10*s.* 9*d.*

Then follows the Satute, 1st Charles I. cap. 2, reciting the Statute of James, and because his then Majesty *had received divers fines* for Leases *and Estates* contracted for, it is enacted, " That all Leases to be made within three years then next " should be good and effectual in law against the then King, " and against all persons that should *thereafter* inherit or enjoy " the Duchy, with the same proviso as to the term, and as to " Leases in possession and *Leases in reversion,*" as is in the Statute of James, and the same reservation is required of the ancient or most usual rent.

I will pass over the civil wars, and proceed to the time of the restoration, where I find the title of Sir William Clayton commences; previous to which title, the Statute of 13th and 14th Charles II. (1661), c. 4, was passed. This Statute recites, That great part of the Lands annexed to the Duchy had been held by sundry Leases thereof, made for years, and for one, two, and three lives, by means whereof the *Tenants having fixed Estates, had been encouraged to improve* and manure the same, and therein laid out great sums of money in building and otherwise, to the great ad-

vantage of the public, and *that for twenty years and more then last, no such Leases had been legally made, so that it was probable most of the Tenants' Estates would be determined, or near determination, ere that there could be any Estates well and legally renewed,* unless remedy therefore was provided; by means of which determination of the Tenants' Leases, waste, spoil, and dilapidation was likely to happen, the Lands become worn out and decayed, and great disturbance and impoverishment to the Tenants. And that, *on the like consideration,* King Charles I. was, by Special Law, enabled to make such Leases, it was enacted, " That all Leases then already made, or thereafter to be made, within three years then next by the then King, should be good and effectual in law, according to the purport and content of such Leases, against the then King, his heirs and successors, and against all and every person or persons that should *thereafter* inherit or enjoy the Duchy, provided that every such Lease in possession should be made but for three lives, or fewer, or for thirty-one years or under, or some other term of years determinable upon one, two, or three lives, and not above. And *if such Leases be made in reversion,* that then the same, together with the Estates in possession, do not exceed three lives or thirty-one years, and not dispunishable of waste; and so as upon every such Lease shall be reserved *the ancient or most usual rent, or more,* or such rent as had been paid for *the greater part of twenty years before making the Leases;* and where no such rent had been reserved, " then a reasonable rent, not being under THE FOURTH PART of the clear yearly value."

Here we find the great anxiety of the Parliament for the Tenants having their Estates legally renewed, by reason of thus having improved the Duchy Lands, *under the faith they had placed in the Parliament that they should have fixed or perpetual Estates;* which faith the Parliament would have broken had it suffered the Leases to determine, and the King to take advantage of such determination. The Parliament has always shewn great jealousy of the King's power over these Lands, as against the rights of the Tenants.

In this Statute will be observed *a variation* from the preceding Acts. The rent directed to be reserved being the " ancient or most usual rent, *or more;*" and where no rent had been reserved,

then the rent was *not to be under a one-fourth part of the clear yearly value,* whereas, *in the former Acts* such last-mentioned rent was *not to be under a twentieth part* of the clear yearly value.

At this time every expedient, just and unjust, was resorted to by the King for getting money. The King refused to grant Leases at the ancient rents; he demanded fines upon renewal as well as increased rents; and if the Tenants refused these exactions he seized their Estates, and granted them to other persons, which is quite parallel with the present case; and I find that this was felt so high a grievance that the Legislature was afterwards obliged to interfere; and in the 22nd of the same King, (1669,) passed a Statute, which recites "That many of the Leases belonging to the Duchy had been granted by Lease to the Tenants, *which Leases were desired to be renewed by many of the said Tenants;*" and "that of late years divers *increased rents* had been reserved upon the *leased Lands,* for the improvement of that revenue, *whereof the Tenants had complained* to the King, who was pleased that they might compound with his officers for the *discharge* of the said *increased rents,* and *be restored to the old rents.*"

"*To the end* the same might be effected, *and the Tenants be encouraged to renew their Leases and Estates, and thereby the better enabled to repair their houses, provide for their families,* and to *improve* THEIR LANDS, holden of the said Duchy," it was enacted "That *all Leases then made or to be made* within three years then next by the then King *should be good and effectual in law,* according to the purport and content of the same, *against the then King, his heirs and successors, and against all and every person and persons that should at any time thereafter have, inherit, or enjoy the Duchy;* Provided that every such Lease *in possession,* so made or to be made, was not made for more than thirty-one years, or for one, two, or three lives, and not above; and if such Leases should be made in *reversion* or *expectancy,* that then the same, together with the Estates in possession, did not exceed three lives or thirty-one years; and not dispunishable of waste, and so as upon every such Lease should be reserved the *ancient* or *most usual rent, or more, or such rent as had been reserved for the greater part of twenty years next before the year* 1660; and when no such had been reserved, then a reasonable rent was to be reserved, not under a twentieth

part of the clear yearly value; and all Leases *otherwise made, or to be made, were declared null and void.*" And it was ordained and enacted, That "all covenants, conditions, reservations, and other agreements contained in every Lease, *made or to be made,* should be good and effectual in law, according to the *words* and contents of the same, *as well for and against them to whom the reversion of the same Lands should come, as for and against them to whom the interest in the said Leases should come* respectively, as if the King, at the time of making thereof, were seized of an absolute Estate of fee simple—"*Saving* to all persons (other than to the then King, his heirs, and all persons that should thereafter have, inherit, or enjoy the Duchy,) all such rights, titles, estates, customs, interests, tenures, claims, and demands whatsoever, as they had or ought to have had before the making the Act, in as large and ample manner as if the Act had never been had or made."

Previous to passing this Bill, *it was ordered in Committee* "That it be recommended to the Lords' Commissioners of the Treasury *to have regard of preference in letting Leases to the ancient Tenants of the Duchy.*"—Journal of the House of Commons, vol. ix. p. 149. The Proviso in this Bill was tendered by the House, and after twice reading, it was resolved, "That the Proviso be made part of the Bill."

The variation in the Proviso of *this* Statute from that in the *former* Statutes of James and Charles I., consists in directing that the rent to be reserved should be the ancient or most usual rent, or more, *or such rent as had been reserved for the greater part of twenty years next before the year* 1660. BETWEEN THE PASSING OF THIS ACT, AND THAT WHICH PRECEDED IT, THE TITLE OF SIR WILLIAM CLAYTON COMMENCES.

On the 22nd January, 12th Charles II., a Lease of the scite and demesne Lands of the manor of Kennington, and of a capital messuage, called Vauxhall, was granted to Henry Lord Moore for thirty-one years, from Michaelmas then last, at a rent of £150, with liberty for the King to resume Vauxhall.

On the 16th May, 13th Charles II., Lord Moore surrendered this Lease, in consequence of the King resuming Vauxhall.

On the 22nd May, 13th Charles II., a new Lease was granted

to Lord Moore, of the site and demesne Lands of the manor only, for thirty-one years, from Michaelmas then last, *at the same rent.*

Lord Moore paid this rent to Michaelmas, 1661, and then assigned the Lease to Lord Loughborough.

Lord Loughborough considering himself aggrieved by the rent of £150, refused payment, and proceedings were taken, which were referred to the Chief Baron, Sir Matthew Hale, by whose certificate, dated 5th May, 1666, it appears that, because of Vauxhall, which was estimated in yearly value at £100, was in the actual possession of the King, without his answering any rent for the same, Lord Loughborough ought in equity and good conscience to be discharged from the arrears, and *the rent was fixed at £50,* but *this was not the ancient rent.*

After this, Clayton and Morris purchased the Estate from Lord Loughborough.

It here becomes material to get at the value of this property at the time Clayton and Morris became possessed of it, and *from an old rental taken at the time* they made the purchase from Lord Loughborough, I find the following statement:

"An ACCOUNT of several Parcels of LAND, lying in Kennington, in the Parish of Lambeth and County of Surrey, lately belonging to the Right Honourable the Lord Loughborough, deceased."

	£.	s.	d.
"The Mansion House, now known by the sign of the Bull's Head, at £8. per annum.....	8	0	0
"Barn Field, being, by estimation, 5 Acres, at £2. 10s. per Acre.....	12	10	0
"Barn, belonging to at £15. per annum	15	0	0
"Fields, that Mr. French holds, being, by estimation, 7 Acres, at £17. per annum	17	0	0
"White Hart Field, being, by estimation, 8 Acres, at £2. 10s. per Acre.....	20	0	0
Carried over	£.72	10	0

	£.	s.	d.
Brought forward	72	10	0
Another Field, called by the name of the "9 Acres," at £2. 10s. per Acre.....	22	10	0
Another Field, called by the name of the "5 Acres," being part of it, now in the possession of Thomas Browne, gardener, at £2. 10s. per Acre	12	10	0
One little Pingle, now in the possession of Edward Hicks, gardener, at £2. 10s. per annum	2	10	0
Two Fields, behind Newington Church, at £3. 6s. 8d. per Acre, being, by estimation, 9 Acres	30	0	0
The Ground where the Brick Walls are called by the name of the "40 Acres," at £2. 10s. per Acre....	100	0	0
Houses at the Butts, at £15. per annum	15	0	0
Of Mr. Hyne, for the use of a Way, £1. per Annum..	1	0	0
Total Annual Rental of the whole Property, subject to Tithes, Taxes, Repairs, &c....	£256	0	0

So that previous to the lease granted to Morris and Clayton, 1670, *the total rental* of this property was £256 *a year*, which was subject to deductions for taxes, tithes, &c.; and I collect from the leases granted by Morris and Clayton, also at this period, that *the whole was nursery ground, and the Mansion then converted into an Inn, called the Bull's Head, value £8. a year.*

In 1667, Morris and Clayton erected a brick wall upon the fields called the Forty Acres, for the purpose of raising fruit, which extended over 363 perches of the land.

On the 8th June, 23rd Charles II. (1670), Morris and Clayton, in consideration of *a fine of* £288. (very little more than one year's rent), obtained Letters Patent, granting them this estate *in reversion* from Michaelmas, 1691, for ten years, *at the rent of* £50., and there then remained of the lease made to Lord Moore twenty-one years unexpired in possession, and which, added to the reversionary grant, made the full term of thirty-one years.

In 1672, 25th Charles II., it appears that the Statute passed in 1669, was not sufficient to answer its intended purpose, and further complaint had been made as to the Duchy having increased the

ancient rents paid by the tenants; another Act was therefore passed, which recites, "that many of the lands belonging to the Duchy of Cornwall, had been granted by lease to the tenants, some for the term of *one, two,* or three lives, and some for divers years, determinable upon *one, two,* or three lives, and others for thirty-one years and under; which leases *were desired to be renewed by many of the tenants.*

"That of late years divers *increased* rents had been, by order of the then late Lord Treasurer, reserved upon the leased lands of the Duchy, for the improvement of *that revenue, whereof the tenants had complained* to the King, who was pleased that they might compound with his officers, for the discharge of those increased rents, and *be restored to the old rents formerly paid.*"

To the end the same might be accordingly effected, and that the *tenants might be encouraged to renew their leases and estates,* and THEREBY *the better enabled to repair their houses,* and *provide for their families,* and *to improve their lands holden of the Duchy.* IT WAS ENACTED, "that *all leases and grants then made or to be made* within three years then next by the then King by Letters Patent, of any lands *then in lease, or then out of lease, should be good and effectual in law,* according to the purport and contents of the same leases and grants, *against the then King, his heirs and successors, and against all and every other person and persons, that should at any time thereafter have, inherit, or enjoy the Duchy.* Provided that every such lease or grant so made or to be made, was not made for more than one, two, or three lives in possession, or for thirty-one years or under, or for some term of years, determinable upon one, two, or three lives, and not above; and if such leases or grants be made in *reversion or expectancy,* that then the same, together with the estates in possession, did not exceed three lives or thirty-one years, and not dispunishable of waste, and *so as upon every such lease be reserved the ancient or most usual rent,* or more, or such rent as had been reserved for *the greater part of twenty years next before* the making of the said leases; and where no such rent had been reserved, that then a reasonable rent, not being under *the twentieth part* of the clear yearly value, and *all leases and grants otherwise made, were declared null and void.* And IT WAS FURTHER ORDAINED AND ENACTED, that all cove-

nants, conditions, reservations, and other agreements contained in every lease or grant then made or to be made, as aforesaid, should be good and effectual in law, according to the *words and contents* of the same, as well for and against them to whom the reversion should come, as for and against them to whom the interest in the said leases or grants should come respectively, as if the King at the time of the making thereof, were seized of an absolute estate of fee-simple, with the same saving clause as in the preceding Statute, 22nd Charles II. c. 7.—I find only *two variations* in this Statute, compared with that of the 22nd Charles II. c. 7, *one*, that the enacting clause making all leases good extends to lands "*then in lease or then out of lease*," which is only a sort of tautology, and therefore of no importance; the *other* is in the *proviso*, which requires, where no antient rent, then such rent as had been reserved for the greater part of *twenty years next before the making of the leases.*

After this Statute, the lease granted in 1670 *to Morris and Clayton, became the sole property of Sir Robert Clayton.*

In 1685, Sir Robert Clayton presented a petition to the Lord High Treasurer of England, stating, "that he being possessed of and in parcel of the Demesnes of the Manor of Kennington, parcel of the Duchy of Cornwall for sixteen years to come at Michaelmas then last, by virtue of a lease from His then late Majesty, prayed he might be admitted to make up his term thirty-one years, *for such fine as his Lordship should think reasonable, and at the same time he claimed the benefit of the last Statute of the* 25*th Charles II., and required to be subject only to the antient rent of* £16. 10*s.* 9*d.*"

This petition was granted, and a double fine assessed by reason of half the term having run out before application had been made for renewal, being £532. 6*s.*, (not exceeding two years' rent); and £234. 4*s.*, a further fine for exoneration, or rather *a purchase of* £33. 9*s.* 3*d. of the yearly rent,* to reduce it to the ancient rent of £16. 10*s.* 9*d.*

The rental of the estate I find at this time to have been as follows:—

	£.	s.	d.
The Manor House and Garden, with two Acres of land,.....at per Annum	14	0	0
Long Barn.....	15	0	0
Barn Fields, containing 4 Acres	12	0	0
White Hart Field, containing 8 Acres.....	24	0	0
Nine Acres.....	22	0	0
Five Acres and Pingle, in the occupation of Thomas Brown	15	0	0
Nine Acres, lying behind Newington Church..	30	0	0
Seven Acres	17	0	0
Forty Acres	100	0	0
Butt's Houses.....	15	0	0
For the use of a way.....	1	0	0
Total Annual Rental.....£	265	0	0

The double fine imposed being twice this Rental, made very near the amount assessed.

It will be seen, that between the time of the grant made to Morris and Clayton and 1686, (a period of sixteen years,) the estate had been improved only £9. per annum.

Previous to any grant being made upon the petition of Sir Robert Clayton, it became necessary (there being another King) to apply to the legislature, and by an Act passed 1st James II. c. , 1685, reciting, that " many of the lands belonging to the " Duchy had been granted by lease to the tenants, some for the " time of one, two, or three lives, and some for divers years, deter- " minable on one, two, or three lives, and others for thirty-one years " or under, *which leases were desired to be renewed* by many of " the tenants.

" That *several years next following the restoration of Charles II.* " *divers increased rents were received upon the leased lands* of the " Duchy *for the improvement of the revenue thereof, whereof the* " *tenants made complaint to his then late Majesty*, who was pleased " that they might compound with his officers for the discharge of " those increased rents, and *be restored to the old rents*, those " formerly paid for their lands.

" TO THE END *the same might be accordingly effected, and the*

" *tenants might be encouraged to renew their leases and estates, and* " *thereby the better enabled to repair their houses and provide for* " *their families,*" IT WAS ENACTED, " that all leases and grants " made in the time of His then late Majesty, or then made or to " be made within seven years then next, by Letters-patent of any " lands, should be good and effectual in law, according to the " purport and contents of the same, against the then King, his " heirs and successors, and against all and every other person " and persons that should *at any time thereafter* have, inherit, or " enjoy the Duchy, provided that every such lease or grant so " made or to be made, was not made for more than one, two, or " three lives, and not above. And if such leases or grants be " made in *reversion or expectancy,* that then the same, together " with the estates in possession, did not exceed three lives, or " thirty-one years, and not dispunishable of waste, and so as " upon every such lease should be reserved the ancient or most " usual rent, or more, or such rent as had been reserved for " *the greater part of twenty years next before the year* 1660; and " where no such rent had been reserved, that then a reasonable " rent, not being under a twentieth part of the clear yearly value: " *and all leases and grants otherwise made were declared null and* " *void.*"

Then follows the same enactments, making good all covenants contained in the Lease, and the same saving clauses as in the two preceding Acts of Parliament.

And it was further enacted, " That in case any of the *Leasehold Tenants* of the said Duchy *should at any time* within seven years then next *compound or agree for the taking off and discharging of any increased rent reserved as aforesaid, then upon such composition* so made, *and the money thereby arising paid from thenceforth, such increased rents should cease and become void, and the old rents only be charged upon the Lands,* for which such composition and payment should be made, and none other; any reservation, condition, or other matter or thing whatsoever to the contrary notwithstanding.

There are *several variations* between this Statute and the last passed in the reign of Charles II.

Several are occasioned by the Parliament of King James identi-

fying the complaints of the Tenants for increasing their rent with King Charles II.

That part of this Act which confirms the Leases, says, " All Leases and Grants made in the time of his then late Majesty, or then made or to be made *within seven years*." The same part of the 25th Charles II., says, " All Leases and Grants then made, or to be made *within three years*, of any Lands *then in Lease* or then out of Lease," which latter words were only introduced into that Statute.

In the Proviso restricting the Lease to one, two, or three lives, the words " in possession," as introduced into the same part of the Statute of 25th Charles II. are here omitted, and that part of it which requires, where no ancient rent, then such rent as had been reserved—not " for the greater part of twenty years next before the year of the Lease," as in the latter Statute, but—" for the greater part of twenty years next before the year 1660, as in the Statute 22 Charles II.

It is only under this Act that Leasehold Tenants were enabled to compound for the rents that had been advanced upon them by Charles II.; *the preceding Acts* of Parliament, *although expressing the intention*, yet *confining the power to the Copyhold Tenants* of the Duchy.

By Letters-Patent, dated 10th April, 2nd James II. 1686, the Estate was granted, *in reversion*, to Robert Clayton, Esq. (afterwards Sir Robert Clayton,) from Michaelmas, 1701, for fifteen years, at the ANCIENT YEARLY *rent of* £16. 10*s*. 9*d*. This grant made, with the term in possession, the full term of thirty-one years.

These Letters-patent contain covenants from Mr. Clayton to repair, to plant ten elm trees; to deliver in every sixth year a terrier of the premises to the auditor of the Exchequer, *not to erect any new buildings without licence.*

They also contain a grant to Mr. Clayton from the Crown, of the advanced rent of £33. 9*s*. 3*d*., in consideration of another fine of £234. 4*s*., and a release of that rent to the Earl of Drogheda and Morris and Clayton, from Michaelmas, 1685, and the rent of £50 was thereby reduced to the *ancient rent of* £16 10*s*. 9*d*., with a *proviso for re-entry on non-payment of rent only.*

From the time of this grant to the next, the Lands were con-

tinued in the same state as nursery and garden-grounds, and leased out to different gardeners at about the same rental.

Upon the gross amount of the rental received by the Lessee from his undertenants, the fine upon renewal was calculated. This fine it appears never exceeded very little beyond one year's rent, allowing for repairs and outgoings, and such seems to be the custom, so that as the estate was improved in rental, *the Duchy became benefitted* by the consequent *increase of fine upon every renewal.*

On the 17th January 4th William and Mary, 1692, a Bill was presented to the House of Commons, entitled "An Act for enabling their Majesties to make grants, leases, and copies of offices, lands, and hereditaments, parcel of their Duchy of Cornwall, or annexed to the same, and for confirmation of leases and grants already made," which was passed on the 14th February following, and sent to the Lords. This Statute does not appear upon the rolls of Parliament. I find, however, by the Journals, that much discussion took place upon the passing this Bill; that the Lords made several amendments, chiefly relating to the fees demanded by the officers of the Treasury from the tenants, *upon renewal of their leases,* which the Lords insisted upon laying down rules for, and which the Commons contended were too oppressive, and a committee was appointed to prepare reasons for their House not agreeing to the amendments. Their reasons were as follow:

"1st.—Because the establishing so great fees will be a discou-
"ragement to the tenants, hinder them from renewing, and dis-
"able them from paying so great fines, as otherwise they might
"do, to the lessening their Majesties' Revenue, whereof the
"Commons ought to be very tender, especially at this juncture,
"when it is so difficult to find money to supply the public occa-
"sions.

"2nd.—Because the Exchequer officers, who are the only
"persons interested in this amendment, when they attended the
"Committee of the Commons, could not shew a rule for, or make
"out any right to, the fees they demand, which are far beyond
"what the tenants of any other lords pay for their leases, so that
"it will be a great favor if the said officers be allowed by law,
"£10. for a lease, and £4. for a copy, when otherwise, for aught
"appears, their taking half as much is not to be justified.

" 3rd.—Because the Commons conceive this amendment will be " of little or no advantage to the officers themselves, for the " tenants, who are not well able or willing to pay so great fees, " would (*as of late they have done*) let their leases run out to the " last, whereas the moderating the fees, as by the Bill, will en- " courage them to renew from time to time, on marrying their " children, or as any life drops off.

" 4th.—Because the enlarging the fees, as by the amendment, " is the laying a charge on the subject, which is so inherent and " fundamental a right of the Commons, as they can by no means " depart from."

On the 16th April, 1694, 5th and 6th William and Mary, another Act was passed, entitled as the last.—This Act recites, " That many of the lands belonging to the Duchy had been granted by lease to the tenants, (as in the recital made in the last Statute, 1st James II.) *which leases were desired to be renewed,*" and reciting, as in the latter Statute, the *complaints made by the tenants to Charles II.* for increasing their rents:—To the end that the *tenants might be encouraged to renew their leases and estates, and thereby the better enabled to repair their houses, and provide for their families, and to improve their lands holden of the said Duchy,* It is enacted, *that all leases and grants made by Charles II. and James II., or by their then Majesties since their accession, or then to be made* within seven years, should be good and effectual in law, according to the purport and contents of the same, against the then King and Queen, their heirs and successors, and against all other person and persons *that should at any time thereafter* have, inherit, or enjoy the Duchy, with the same proviso, confirmation of covenants, and saving clause, verbatim as in the Statute James II. and the same power for the tenants to compound for any increased rents."

By Letters Patent, dated 23rd October, 12th William III. (1699,) in consideration of a fine of £350, (as usual something more than a year's rent,) the estate was further granted in reversion to Sir Robert Clayton, from Michaelmas 1716, for thirteen years and a half, *at the antient yearly rent of* £16. 10*s.* 9*d.* This grant made, with the term in possession, the full term of thirty-one years,

These Letters Patent contain the same covenants on the part of Sir Robert Clayton as the last, granted in 1686.

All these Letters Patent contain *a regular deduction of title* from the Earl of Drogheda to their respective dates.

In the following year, 1701, (12th and 13th William III.) another Act was passed, similar in all respects to the last of 5th and 6th William and Mary, and *confirming all leases made in the time of Charles II. or in the time of James II., or by William and Mary, or by his then Majesty, or to be thereafter made.*

Pending this Bill, the *tenants of Kirton in Linsey, in the County of Lincoln, (parcel of the Duchy.) had complained to the Parliament of grants having been made by the King, that were prejudicial to them and against their rights;* and the Journals of the House contain *a recommendation by the Committee* to the Lords, Commissioners of the Treasury, *that the tenants of Kirton in Linsey be protected against any illegal disturbance, by color of any pretended grants.*—See the Journal, Vol. XIII. p. 624.

In the year 1707, 6th Anne, a similar Statute in all respects, was passed, confirming all leases *then made or then to be made,* without any specification as in the last Act. And it should be observed, that the proviso directs the ancient rent to be reserved, or such rent as had been paid for the greater part of twenty years, next before the year 1660: the reference to this limit is universal throughout all the Statutes, except that of the 25th Charles II., until the reign of George II., when it was altered to 20 years next before making the leases.

This Act was *continued* by another, passsd in 1714, 13th Anne, which was to meet the limitation of seven years, and is in form the same as that of 1707. In the 2nd George I. (1716) another Act was passed, similar in all respects to those passed in the reign of Queen Anne.

In the 10th George II. (1737) another similar Act was passed.

In the reign of George II. the estate continued in *the same condition* as theretofore, being used chiefly as nursery ground.

The estate had, nevertheless, been improved, and the rental was increased to £276. 16*s.* 6*d.* a year, and the allowance in 1728 to tenants for repairs, tithes, and taxes, amounted to £60.

It is worthy of remark, that *the last-mentioned Letters Patent were suffered to run out and expire, (for nearly two years,)* and *Sir Robert Clayton, having died, his heir and representative, Sir William Clayton was held entitled to renewal,* and by an indenture of lease bearing date the 17th November, 6th George II., 1732, the estate was granted by the then Prince of Wales to Sir William Clayton, for thirty-one years, from Lady-day then last, *at the antient rent* of £16. 10*s*. 9*d*.

After fifteen years had gone of this term, William Clayton, Esq. son of Sir William Clayton (then deceased) surrendered the lease and residue of the term to the Prince, who, by another indenture of lease, dated 18th July, 1747, granted the estate to Mr. Clayton, in consideration of a fine of £354. (as was customary, something more than one year's rent) for thirty-one years, from Lady-day then last, at the ancient yearly rent of £16. 10*s*. 9*d*., and under the same covenants as before stated, in former Letters-patent.

The Prince of Wales having died, the Duchy reverted to the Crown, and an Act of Parliament was passed in 24th Geo. II. 1750, WHICH DIFFERS IN THE PREAMBLE FROM ALL THE FORMER ACTS—it recites, "That the King was seized of the Duchy, and that some doubts might arise in relation to His Majesty granting leases, for obviating whereof, and *for the ease and quiet of the minds of such persons as had taken, or should thereafter take, leases from the King, and to the end that such persons might be sure to have good and indefeasible estates, and be encouraged* TO LAY OUT MONIES IN BUILDING AND REPAIRING, *or otherwise improving the lands to them demised or to be demised,*" It was enacted, that all leases or grants *to be made* within seven years then next, should be good and effectual in law, according to the purport and contents of the same, against the then King, his heirs and successors, and against all and every other person and persons that should *at any time thereafter* have inherit or enjoy the Duchy, with the same proviso as in the 25th Chs. II. c. 3, 1672, which limits the rent to be reserved, (where no ancient rent,) to such rent as had been reserved for twenty years before making the leases. This Act also contains the same confirmation of all covenants, and *the same saving clause as in the preceding Acts of Parliament.*

This Act was continued (though not so expressed) by another Act passed in the 33rd George II., 1759, by reason of the limitation of seven years having expired, which is precisely the same as the former Act, except that it confirms "*all leases made or to be made.*"

There is no clause in these two Acts enabling the tenants to compound for increased rents. The exaction of these rents appears to have been confined exclusively to Charles II., and the remedy was at this time considered no doubt unnecessary.

Upon the death of George II. and immediately after the accession of George III. in 1760, another Act of Parliament was passed, which is verbatim the same as that passed in the preceding year, confirming all leases made or to be made.

By indentures of lease, release, and assignment, the latter bearing date the 10th June, 1761, in consideration of an intended marriage, (which afterwards took place,) between Mr. Clayton and Miss Lloyd, the estate was assigned to Sambrooke Freeman and John Warde, Esqrs., for the then residue of the term of thirty-one years, subject to the rent and covenants in the said lease, upon Trust, for Mr. Clayton till the marriage, and after the solemnization thereof, upon Trust, that the trustees should, by and out of the rents and profits, from time to time, *renew the said lease and take a new lease thereof*, and for that purpose make such surrender of the leases in being as should be requisite, and should stand possessed of the said leasehold premises in the then present lease, and the several subsequent leases thereof, upon trust, to permit the rents to be received by the said William Clayton for life, and after his death, for his said wife for life, and after the decease of the survivor, upon the trusts therein mentioned, with a power for Mr. Clayton and his wife, as they should respectively come into possession, to grant leases for twenty-one years in possession, reserving the best rent, and not taking any fine ; and a proviso, enabling Mr. Clayton, in case he should survive his said wife, to settle the said leasehold property upon any other woman he might marry, so that the lands to be settled should not exceeed the annual value of £200.

On the 24th December, 1763, Mr. Clayton's said wife died, leaving two children, viz., the late Sir William Clayton, and Mary Ann Clayton.

On the 9th February, 1775, Mr. Ward the Trustee died.

By Letters-patent, dated 21st September, 1765, *the estate was granted in reversion, by George III. to Mr. Clayton,* for eighteen years, from the 25th April, 1778, at the ancient rent of £16. 10*s.* 9*d.*, making up the full term of thirty-one years as usual.

By another indenture of settlement, dated 21st September, 1767, in consideration of another intended marriage (which afterwards took place) between Mr. Clayton and the Right Honorable Lady Louisa Fermor, Mr. Clayton did covenant with the Trustees of that settlement (among other things) that in case of the death of his son William Clayton, without issue male (which event did not happen) he would settle the estate (among others) to the use of himself for life, sans waste, remainder to trustees to preserve contingent remainders; and that in such conveyance, there should be a power enabling Mr. Clayton to grant leases for twenty-one years in possession, reserving the best rent, and taking no fine, and charging the estate with a jointure of £400. a year for Lady Louisa, in the event of her surviving Mr. Clayton, and subject thereto to the uses therein mentioned.

The issue of this marriage was two children, George and Amelia Ann.

In the year 1777, *at the time of passing the Act of Parliament obtained by Mr. Clayton, and hereafter stated, I find that this Estate produced Mr. Clayton £358 a year, subject to land-tax, tithes, and other outgoings.*

In 1767 (16th Geo. III.) the seven years having expired limited by the last Statute, another Act was passed (under which the last Letters-patent were granted), which enacts, "That *all Leases and Grants then made, or to be made, by Letters-patent,* within seven years then next, *should be good and effectual in law,* according to the purport and contents of the same, *against the then King, his Heirs and Successors, the then Prince of Wales, and all and every other person and persons, who should,* AT ANY TIME THEREAFTER, *have, inherit, or enjoy the Duchy*; provided that every such Lease or Grant so made, or to be made, was not made for more than one, two, or three lives, or for 31 years, or under, or for some term of years determinable upon one, two, or three lives, and not above; with the same proviso as to Leases or Grants in reversion as in the

last Statute; *and all Leases and Grants otherwise made were declared null and void.*" And it was further ordained and enacted, "That all covenants, conditions, reservations, and other agreements contained in every Lease made or to be made, should be good and effectual in law, according to the words and contents of the same, as well for and against them to whom the reversion should come, as for and against them to whom the interest of the said Leases and Grants should come respectively, as if the King were, at the time of making such covenants, &c., seised of an absolute Estate in fee simple.

"Saving to all persons, their heirs, executors, administrators, and assigns (other than the King and the Duke of Cornwall for the time being, and all other persons that should thereafter inherit or enjoy the Dukedom), all such rights, titles, Estates, interests, tenures, claims, and demands whatsoever, *as they had or ought to have had* before making this Act."

It should be remarked, that all the Acts from the 25th Chas. II. to 16th Geo. III, under which the last Letters-patent were granted, declare all Leases made, or to be made, otherwise than according to their provisions, should be *null and void.*

In 1777, it appears that *a negociation took place* between the late Mr. (afterwards Sir William) Clayton and the Officers of the Duchy, *which had for its object the letting these Lands upon Building Leases. At this time Mr. Clayton had unexpired of the then existing Grant a term of nearly twenty years.*

This negociation, it seems, took place between Mr. Clayton and Mr. Taylor, the then Surveyor of the Board of Works, and usually employed by the Duchy, who greatly encouraged the speculation, and advised Mr. Clayton to surrender his existing interest in the Letters-patent granted in 1732 and 1747, and be at the expense of draining and preparing the Lands, and obtain a new Grant for the usual building term of 99 years, instead of the usual term of 31 years, which would enable him to grant Building Leases to Builders for 65 years or more.

The Officers of the Duchy subsequently, with the view to the improvement contemplated, agreed to grant Mr. Clayton a term of 99 years (instead of 31 years, as heretofore), determinable upon three lives, which, under the then existing Act of Parliament, was

all that could be done, but which, with Mr. Clayton's tenant-right of renewal (it was considered), would be sufficient to enable him, aided by an Act of Parliament (which Mr. Taylor also undertook to procure), to grant the customary Building Leases for an absolute term of 65 years or more, and get the ground covered with Houses.

The intention of the parties contracting was evident, as *in all former Grants,* as well as in those then existing, *there was an express Covenant* on the part of the Lessee *not to erect or build any Edifice, Building, or Structure,* without the consent of their Surveyor; and *in the Letters-patent granted to Mr. Freeman,* and hereafter stated, *that Covenant is omitted,* and in lieu thereof the Lessee is bound to repair as well the Messuages demised, *as all other Messuages, Erections, and Buildings to be erected,* but is not bound to erect any building whatever.

To perfect this negociation, it was also necessary that Mr. Clayton *should purchase the interest of all his Tenants* who held Leases with Covenants to renew, and *the whole Estate was in Lease, except only £31 a-year,* as is shown by the Schedule to the Building Act of Parliament; so that, in order to improve this Estate in the manner contemplated by Mr. Taylor, the benefit of which the Duchy would ultimately obtain, by the increase of fine consequent upon Mr. Clayton's increase of rental, Mr. Clayton was to be at every expence and sacrifice, besides a term of near 20 years of his then existing Grants; and to enable him to do which, he was also, at his own expence, obliged to apply to Parliament; he was also to supply money to the Builders, in the usual manner, to enable them to proceed with the Buildings.

I find at this time, by the affidavit of Mr. Malcolm (made in 1833), one of the Tenants from *the year* 1758, *that these Lands,* with a great deal of other Land adjoining, for a considerable distance, were *then wet marshy Lands, of little or no value, and that they were covered with water three or four months in every year, and that they required very large expence and outlay, even in their cultivation as Garden Ground.*

It appears that Mr. Clayton yielded to the persuasions of Mr. Taylor, and accordingly, in 1776, he obtained, through the agency of Taylor, an Act of Parliament, which is entitled "An Act to "enable William Clayton, Esq., during his life, and the Guardians

" of his Infant Children after his decease, to make Building and " improving Leases of certain Lands and Premises of the Manor " of Kennington, in the County of Surrey, held by Letters-patent " from his Majesty, as part of the Duchy of Cornwall, and *to raise* " *money for payment of the fines and expences of renewing the* " *said Letters-patent*, and for defraying the expences to attend the " granting such Building and improving Leases."

This Act recites the last before-mentioned grant of 18th July, 1747; the settlement of the 10th June, 1761; the death of Maria Eliza Catherine, the then late wife of Mr. Clayton, on the 21st December, 1763; leaving two children, William (the late Sir William Clayton,) and Mary Ann, since deceased, then both infants. Also the death of Mr. Warde, and the Letters-patent of 1765, and settlement of 21st September, 1767, and by which last marriage there were then living two children, George and Amelia Ann (then both infants.)

It then proceeds to recite, " That *part of the premises were then let* to divers Tenants *at rack rents, by and under Leases* for several terms of years, at several yearly rents, *amounting, in the whole, to the yearly rent of* £327, and that *the other part* of the said premises *was let to Tenants at will, at the yearly rent of* £31, *the whole* thereof *subject to Land tax, and a considerable part* thereof *subject to Tithes*, and several Leases thereof were then near expiring, the particulars whereof are set forth in the schedule annexed to the Act.

" That it was apprehended and believed many persons would be willing to enter into contracts for, and take Leases in possession or reversion of many parts of the said premises, for the purpose of building or improvement, and would pay considerable improved yearly rents for the same; and that if such Leases could be granted, the Estate would be considerably increased in the then future value and annual rent thereof; and it was also apprehended that some of the Tenants might be willing to surrender their then present Leases, *upon reasonable satisfaction being made to them for the same*, which would be amply compensated by the great increase of rent such building Lease or Leases would produce.

" That Mr. Clayton had applied to the Lords of the Treasury to accept of a surrender of the then subsisting Lease, and *for the grant*

of a new Lease to Mr. Freeman, the surviving Trustee of the settlement aforesaid, upon the Trusts therein remaining, for ninety-nine years, determinable at the end of three lives, which their Lordships had agreed to.

"That on obtaining such Lease, Mr. Clayton would be enabled to contract for and to grant new Building-leases, in possession or reversion, for any term or terms of years not exceeding ninety-nine years, determinable as aforesaid, but by reason of and during the minorities of his eldest son, and his other children, who then were or might become entitled under the limitations contained in the said settlements, and by reason of the restrictions therein contained, such contracts could not be entered into, or such Leases be effectually made, without the aid and authority of Parliament."

It was therefore enacted, "That *it should be lawful for Mr. Clayton, after obtaining the said Letters-patent or Lease from His Majesty* for the term of ninety-nine years, determinable as aforesaid, at all times thereafter during his life, and for the guardians of such person or persons as, upon the decease of Mr. Clayton, should for the time being be entitled to the rents and profits of the said capital messuage and premises under the said settlements, and should be under the age of twenty-one years, during the minority or minorities of such persons as aforesaid, To demise lease, or grant all or any part of the said premises unto any person who should be willing to build upon, or in any other manner improve, the same, for any term or number of years, in possession or reversion, not exceeding ninety-nine years, to be computed from the 5th April, 1776, determinable upon the dropping of such three lives as should be mentioned and contained in the said Letters-patent or Lease so intended to be granted to Mr. Freeman, reserving the best improved yearly rent, and so as no fine be taken, with the usual directions.

And it was further enacted, "That *it should be lawful for Mr. Clayton,* during his life, and after his decease for the guardians of the person entitled to the rents under the said settlements, and should be under the age of twenty-one years, during the minority or minorities of such person or persons, *to enter into a covenant or covenants in all or any of the Lease or Leases to be by him or them respectively granted, that Mr. Clayton,* and all other persons

claiming under him, or by virtue of or under the said settlement, *should* from time to time, and *as often as occasion should require, apply for; and in case the same could be obtained on reasonble terms, procure such renewal or renewals of the said Lease or Letters-patent as should from time to time enable him or them* TO COMPLETE AND MAKE UP THE FULL TERM *and terms for years which should be so granted by Mr. Clayton,* or such guardians as aforesaid; *and that when and so often as the said Lease or Letters-patent* to be granted *should be renewed, then that Mr. Clayton,* or such other person who, for the time being, should procure such renewal of the said Lease or Letters-patent as aforesaid, *should,* upon the request of any of the person or persons who, for the time being, should be entitled to the term of years then subsisting in such Leases as should be so granted by Mr. Clayton, or such guardians as aforesaid, *grant such further or other Leases* and terms for years of and in the respective premises so leased, *as would from time to time make up his, her, or their term or number of years, the full or complete term or number of years which in and by such original Lease* or Leases to be granted by Mr. Clayton, or such guardians as aforesaid, *should be agreed to be granted*; provided that the person or persons requesting such further Lease or Leases, did pay unto the person or persons who should have procured such renewed Letters-patent as aforesaid, such sum or sums of money as should be an equal share of the fine and fees which shall have been paid for procuring such renewed Letters-patent as aforesaid, in proportion as the annual rent of the premises to be comprised in such further Lease or Leases should bear to the annual rent of the whole of the said premises to be comprised in such renewed Letters-patent as aforesaid, (save and except as to such fine and fees as should be paid for any renewal or renewals of the said Letters-patent, which should be procured within the last twenty years of such term or terms of years as should be granted, or contracted to be granted, by Mr. Clayton, or such guardians as aforesaid, in which case such further Lease or Leases should be granted without paying any share of the fine and fees to be paid for renewal of such Letters-patent:) which covenants to be entered into by Mr. Clayton, or such guardians as aforesaid, were declared to be

binding upon all persons who should claim under Mr. Clayton, or under the settlement."

And after enacting "That *all Leases to be made in pursuance of this Act should be good*," it was further enacted, "That the rent to be reserved on every such Lease to be made, in pursuance of this Act, should go, belong, and be paid to and for the benefit of the person or persons who, for the time being, by virtue of the said settlement, should be entitled to the rents and profits of the premises thereby leased."

And it was further enacted, "That when and as soon as the Lands and premises should be granted by his Majesty to Mr. Freeman, for the term of ninety-nine years, that *it should be lawful for Mr. Freeman*, and he and they were thereby required, at the request of Mr. Clayton, during his life and after his death, of such guardians as aforesaid, at all times during the continuance of such intended grant from his Majesty, by grant, mortgage, lease, assignment, or other sufficient conveyance of the said land and premises to be comprised in the said Letters-patent from his Majesty, for all or any part of the said term of ninety-nine years, determinable as aforesaid, *to borrow and take up at interest* such sum and sums of money as should by Mr. Clayton, or such guardians as aforesaid, be judged necessary *for paying* and defraying the charges and expences attending, or in any way relating to the obtaining and *passing this Act*, and *all other reasonable charges* and expences incident to the trusts thereby created and declared; and in the next place, to reimburse unto Mr. Clayton so much money as he or they should pay or lay out *for the fine or fines to be paid for granting or renewing the said Letters-patent* from his Majesty, and the expences attending the same, *and for buying in and purchasing the several term or terms of years from the several Lessees of the then subsisting Leases*, as should be judged necessary or effectual for carrying the purposes of this Act into execution; and also all such other sum and sums of money as they should pay, lay out and expend *for the letting, planning, measuring, or surveying the lands* and premises to be leased by virtue of this Act, *and of the buildings intended to be erected thereon*, so as Mr. Clayton entered into a covenant with such mortgagee or morgagees,

to pay and keep down the interest, during his life, of the money so borrowed."

And it was further enacted, That *all persons to whom Mr. Freeman should,* by virtue or in pursuance of this Act, from time to time, make any *mortgage,* grant, assignment, or conveyance of all or any part or parts of the said Land and premises, for securing the money to be borrowed and raised by virtue of this Act, should and might, immediately after the payment of the said mortgage money to Mr. Clayton, or such Guardians as aforesaid; and after the executing and completing of such several and respective mortgages, grants, assignments, or conveyances, *have, hold, and enjoy the said premises so mortgaged,* assigned, or conveyed, *for all such term, estate, and interest, right and benefit of renewal,* as Mr. Clayton, or any persons claiming under the same settlement, had therein."

This Bill, previous to being passed into an Act, was, by an order of the House of Lords, dated 15th February, 1776, referred to the Judges, and the following appears upon the Journal of the House of Lords when this Act was passing: "12 Martii," 1776. Lord Scarsdale in the chair. The title of the Act was read. The preamble was read, and the indenture of lease therein recited, dated 18th July, 1747. The settlement made previous to the marriage of the said William Clayton with Maria Eliza Catherine Lloyd, his late wife. The issue Mr. Clayton had was then proved. The death of one of the Trustees was then proved. The Letters-patent of 1765 were produced. The settlement made previous to the marriage of the said William Clayton with the Right Honourable Lady Louisa Fermer, his then wife, was then exhibited. The issue of that marriage was then proved.

The annual value of the Estate at Kennington, held under the above-mentioned letters-patent, and *then let to divers tenants,* by the said Mr. Clayton, *at rack rents amounting in the whole to* £327, *subject to land-tax and tithes, were then proved.*

Mr. Robert Taylor, Surveyor to the Duchy, proves that many persons would be willing to enter into contracts for and take leases in possession and reversion of many parts of the said premises at Kennington, and pay considerable yearly rents for the same, which would greatly improve the value thereof, and is of opinion that

some of the tenants would be willing to surrender their leases upon a reasonable compensation being made to them, which would be amply compensated for by the increase of rent such *building leases would produce.* Upon his evidence the Committee refer the matter to the Judges, *Lords Willes and Nares,* who are to make report to their Lordships, *whether they consider his Majesty would be justified in acceding to the memorial of Mr. Clayton.*"

Upon reference to *the report made to the House of Lords by these Judges, it appears that they found all the facts stated in the preceding Act, and in particular they found, "That the premises were, by the settlement before stated, assigned to Trustees, in trust, from time to time to renew the said Lease,* and subject thereto, 'in trust,' as in the said report is set forth."

And they found "that it had been proved to them, that the said leasehold premises at Kennington were then let to divers tenants, at rack rents, amounting in the whole to £358 a year, subject to land-tax, and a considerable part thereof to tithes, and that several of the terms of years of such leases were then nearly expired, and *that many persons would be willing to enter into contracts for and take leases in possession or reversion* of many parts of the said premises, *for the purpose of building,* and would pay considerable improved yearly rents for the same, in case such leases could be granted, whereby the said Estate would be greatly increased in the future value and annual rental thereof; and that *some of the tenants* might be willing *to surrender their present leases, upon reasonable satisfaction being made to them for the same.*"

"And that it had also been proved to them, *that Mr. Clayton had applied to the Lords Commissioners of the Treasury to accept of a surrender of his then subsisting lease, and to grant a new lease to the surviving Trustee of the settlement, upon the remaining trusts therein contained, for the term of ninety-nine years, determinable at the end of three lives,* SUBJECT TO SUCH FINES, COVENANTS, AND CONDITIONS OF RENEWAL AS WERE USUAL IN THE LIKE OCCASIONS."

And they certified, among other things, "that they had perused and signed the said Bill, which they conceived to be proper for the purposes aforesaid, and were of opinion that it might be reasonable that the same should pass into a law."

On the 28th March, 1776, Lord Scarsdale reported from the Lords' Committee, That they had considered the Bill, and examined the allegations thereof, *which were found to be true.* The Committee had gone through the Bill, and directed him to report the same to the House without any amendment.

On the 13th April, 1776, Mr. Bacon, in the House of Commons, reported from the Committee that *they* had examined the allegations of the Bill, and found the same to be true. And,

On the 13th May following this Bill received the Royal assent.

That in order to carry into effect the intention of this Act of Parliament, *Letters-patent, dated 5th March, 1777, in consideration of the surrender of the before-mentioned grants of the 18th July, 1747, and 1st September, 1765, and of a fine of £468,* were granted *unto Mr. Freeman, as the surviving Trustee of the settlement* of the 10th June, 1761, *for the full end, term, and time of ninety-nine years, if William Clayton, George Clayton, and James Medwin, any or either of them, should so long live, upon and subject, nevertheless, to the trusts declared of and concerning the said demised premises, in and by the said recited indenture of the 10th June,* 1761, at the ancient rent of £16. 10*s.* 9*d. during the whole term of ninety-nine years, thereby granted, or thereby intended to be granted.*

The fine paid upon this grant is of easy calculation, *being the old accustomed fine of one year's rent,* and something more; the total rental at this time being £358, and allowing for one year's Duchy rent, £16., and 10 per cent. for collecting, &c., £35., making £468. the fine paid, which made it equal to one year-and-a-half's rent.

This appears to have been the first grant, made for a term of ninety-nine years, determinable upon three lives, and Mr. (afterwards Sir Robert) Taylor, advanced Mr. Clayton £1000. to pay the fine upon renewal of the last-mentioned Letters-patent, and the expenses of the Act of Parliament; and in order to secure this money, Mr. Clayton, by virtue of the Act of Parliament, required Mr. Freeman to execute a mortgage of the estate to Mr. Taylor; and accordingly, by an indenture of mortgage, bearing date the 8th March, 1777, after reciting the facts stated in the last-mentioned Act of Parliament, Mr. Freeman, at the request of

Mr. Clayton, and in pursuance of and in exercise of the power given to him by that Act, assigned the estate *and all right and benefit of renewal of the said Letters-patent* to Mr. Taylor, in which mortgage, Mr. Clayton covenants to cause the Letters-patent *from time to time to be renewed,* or *a new lease to be granted in the name of Mr. Freeman, upon the trusts aforesaid, in such manner and in such times as was usual and customary for leases held of his Majesty in right of the Duchy of Cornwall, to be renewed, or new made,* and that he would pay all fines for such renewal.

This mortgage was enrolled in the Duchy office, the 9th August, 1777.

That *Mr. Clayton subsequently expended* £5,000. *in laying out and making the estate fit for building purposes,* and that *for ten years after passing the last-named Act,* of Parliament, *he was only enabled to procure one building tenant,* Mr. Tegetmeyer, who, in the same year, through the agency of Mr. Taylor, took a lease of that portion of the lands then formerly occupied by John Reed and William Watts, who paid *a rent of* £64. *a year,* and this lease to Tegetmeyer was granted at a rent of £262. 10*s.*, clear of all outgoings, for a term of ninety-seven and three-quarter years, if William Clayton, George Clayton, and James Medwin should so long live, and *under a covenant that the lessee should build at least seventy houses, and Mr. Clayton covenanted to renew, in the language of the last-mentioned Act of Parliament,* so as to make up the full time.

This was the only lease Mr. Clayton granted, and he died the 3d July, 1783, having survived his wife Lady Louisa, leaving William Clayton, his son and heir, who, in Hilary Term 24th George III., suffered a recovery of the settled estates, and became entitled to this estate free from the limitations in the settlement of the 10th June, 1761, but subject to the mortgage to Mr. Taylor.

By indenture dated 23rd October, 1786, Mr. Freeman the trustee having died, his Executor assigned the legal estate in this property, *and all right and benefit of renewal of the said Letters-patent,* unto William Clayton, Esq. the son, subject to the mortgage to Mr. Taylor.

This assignment is also enrolled in the Duchy office the 18th December, 1786.

Mr Clayton (the son) expended considerable sums of money upon this estate with the view to encourage builders, and in the year 1787, *succeeded in granting six leases for sixty-five years,* determinable upon the three lives, at ground rents amounting together to £70. 7*s.* 6*d. in each of which he entered into a covenant to renew, so as to complete and make up a term of sixty-five years to the Lessees,* who, without some such certain building term, would not, of course, expend their capital.

In the year 1788, Mr. Clayton succeeded in granting two other leases upon the same terms, at ground rents amounting to £97. 10*s.*

In the year 1789 he succeeded in granting one other lease upon the same terms, at a ground rent of £350.

In the year 1790 he granted one other lease upon the same terms, at a ground rent of £51.

The estate by this time having become covered with valuable houses and buildings, *the Duchy endeavoured to encourage building* upon other parts of the estate of the Duke of Cornwall, not in lease to Mr. Clayton, *but found it impossible to get builders to take the land without having the usual building term of ninety-nine years granted,* as was the case when the building of Regent Street was contemplated.

The Duchy Officers seeing the progress Mr. Clayton had made *with such rights as he had,* considered it expedient to apply to Parliament for an enabling statute, and accordingly an Act was passed 33d George III. c. 78 (1792) which recites:

" That the Prince of Wales then stood seised of the Duchy of an Estate of an inheritance under a special form of limitation, differing from the ordinary rules of inheritance at common law, whereupon some questions might grow what Estate in the same the Prince might legally grant, and whether Leases and Grants made by him would be good and effectual in law longer than for his life. For avoiding which doubt, and for the ease and quiet of the minds of such persons as had taken or thereafter should take Leases or Grants from him, and to the end such persons might be sure to have good and indefeasible Estates, and be encouraged to lay out monies in

building and repairing, or otherwise improving the several Lands and Tenements to them demised,"

It was enacted, "That all Leases or Grants *made* or to be made by the Prince should *be good and effectual in law,* according to the purport and contents of the said Leases or Grants, against the then King, his heirs and successors, and against the Prince and his heirs, and against all and every person and persons who should inherit the Duchy."

This Act contains the same proviso, almost verbatim, as that in the 21st James I., c. 29.

This Act further recites, "That various applications had been made to the Prince, as well by the Tenants of the said Duchy as by other persons, for Grants of certain parts of the said Duchy *for such term of years as would enable the Lessees to erect substantial buildings thereon,* and to improve the waste Lands of the said Duchy, *which could not be undertaken by the Lessees unless they were secured by a longer interest in the premises than thirty-one years, or a term of years determinable upon three lives.*" It was therefore further enacted, "That it should and might be lawful for the Prince, and he was thereby empowered, to make Leases and Grants by Letters-patent or Indentures of any Lands for any term of years *not exceeding the term of ninety-nine years,* expressly for the purpose of improving the same by erecting substantial buildings thereon, or for the purpose of improving waste Lands by cultivation or otherwise, provided that upon all such Leases or Grants, so to be made, improved annual ground rents be reserved and made payable to the Prince, or to such as should have the inheritance or other Estate of the said Duchy; and that in all such cases, Leases or Grants so to be made for terms exceeding thirty-one years, or exceeding the usual term determinable on three lives, no fines or other consideration be taken further or other than the improved annual ground rent."

And it was further enacted, "That all covenants, conditions, reservations, and agreements contained in every such Lease or Grant made or to be made as aforesaid, should be good and effectual in law according to the words and contents of the same," in the same manner as is enacted by the said Statute of 21st James I.

" Saving the rights of all persons, their heirs, executors, administrators, and assigns, other than the then King, the Prince and his heirs, and all persons that should thereafter inherit the Duchy."

This Act is in itself almost conclusive evidence of what was the intention of the contracting parties at the time the Grant was made to Mr. Freeman, in 1777. The Duchy granted all that it had the power of granting; and, as I said before, with Mr. Clayton's tenant right of renewal, that was considered sufficient for the purpose; without such right the Grant might not have existed twenty-four hours, which was rather a frail sort of tenure for building purposes.

It should be here observed, that this Act, from the preamble to the end of the proviso, is nearly a copy of the first Act passed, regulating the possessions of the Duchy, 21st James I., c. 29.

The Act admits the fact, that builders and others would not take the Lands, "either for building or improving the waste Lands, unless they were secured by a longer interest than thirty-one years, or a term determinable upon three lives," and then enables the Duchy to grant leases for the usual building term of ninety-nine years.

From this time to the year 1802, Mr. Clayton granted various Leases, by which the whole Estate would be covered with houses for various terms of sixty-five years and more, at ground rents, amounting in the whole to £407, which, with those I have before stated, make £1,238, *the whole income of the Estate to which Sir William Clayton was entitled until the Leases of the Tenants should expire.*

The improvements thus made upon this Estate since the Grant made to Mr. Freeman, it appears, have been at an expenditure of £500,000. *most of which was laid out subsequent to the Act of* 33 *Geo.* 3. (1792,) which was considered as explaining unequivocally the intention of the Duchy at the time of the last-mentioned Grant; indeed, there cannot (or at least there should not) be any distinction made by the Duchy, between the same class of its Tenants, more particularly where *the outlay of the Tenant is for the ultimate benefit of the Duchy;* and *the outlay, in the present case, appears to have produced a rental of upwards of* £ 20,000. *a year;*

upon which rental the Duchy would be entitled to the accustomed fines on renewal, after the expiration of the Tenants' Leases, certainly not before.

It appears, also, that this large Estate has, since such great improvement, been the subject of sale and purchase, of settlement, and provision for children, and various other acts of ownership expectant upon a certain term, for the outlay of capital, as in all other cases of a like nature; and which, in justice and equity, ought not to be disturbed, more particularly by the King, as the fountain of justice.

I then find that Mr. George Clayton, one of the lives named in the Grant of 1777, died in 1828, and that Sir William Clayton then applied to his late Majesty, King George the Fourth, for a renewal, and proposed to pay a fine on such renewal equal to one and a half year's rent he received; but, in consequence of the bad state of health of that King, nothing was done previous to his decease.

Shortly after the accession of his present Majesty, Parliament was again applied to, and another *Act was passed*, 1 & 2 *William 4, c.* 5, (1831,) which, *the preamble states*, was "*For the ease and quiet of the minds of such persons as had taken, or should thereafter take Leases from his Majesty, and to the end that such persons might be sure to have good and indefeasible Estates, and be encouraged to lay out monies in Building.*" It was enacted, that during such time as the said Duchy should remain vested in his Majesty, it should be lawful for his Majeaty, by warrant, to authorize such or so many of the regular officers of the said Duchy, who by virtue of their several appointments and offices, are concerned in the general superintendance and management of the revenues and affairs of the Duchy, to demise or lease the lands of the Duchy, and also to constitute and appoint all such persons as should be specially named by his Majesty, to be stewards' commissioners for assessing the ancient Duchy lands and tenements, and also to pass the accounts of all receivers; and all leases and grants so made, or to be made, should be good and effectual in law, according to the purport and contents thereof."

This act contains the same proviso as in the last before-mentioned Act of Parliament.

It then further recites, "*That certain parts of the said Duchy*

were capable of considerable improvement, by the erection of substantial buildings thereon, and by the cultivation of waste lands, *which could not be undertaken by the lessees, unless they were secured by a longer interest in the premises than thirty-one years, or a term of years determinable upon three lives."*

It was therefore further enacted, " That it should be lawful for the said officers of the said Duchy, to be named in his Majesty's said warrant, *to demise any lands for any term of years not exceeding ninety-nine years, expressly for the purpose of improving the same by erecting substantial buildings* thereon, or for the purpose of improving waste lands, by cultivation or otherwise: provided that, upon every such leases, improved annual ground-rents be reserved, and that no fines or other consideration be taken further or other than the improved annual ground-rents."

It is singular, that in this Act of Parliament, the saving clause extends to save the rights of all persons except the King and his lessees.

I then find that Sir William Clayton renewed his application for a new grant, and that on the 12th September, 1831, *a renewal was offered him,* for another term of ninety-nine years, determinable upon three lives, *upon payment of a fine of* £64,210, *with interest, from the death of Mr. George Clayton, which amounted together to upwards of* £72,000.

That, *to meet the fine* upon renewal, Sir William Clayton, some years since, insured the life of Mr. Medwin for £2,500, and that to meet the proposed fine of £72,000, it appears that the *total rents received by Sir William Clayton from the estate would not have insured its amount.*

I need not enter into the negociation that subsequently took place between Sir William Clayton and the Officers of the Duchy as it all amounts to the question of fine, which Sir William ultimately declined paying as demanded, nevertheless *offering a reasonable fine.*

Since which, Sir William Clayton and James Medwin are both dead, and it appears that *the Duchy have taken possession of the estate, and granted leases to* 450 *of the occupiers out of* 490 *tenants.*

Sir William Clayton, in his life-time, viz. in December, 1832,

presented a petition of right to the King, in his High Court of Chancery, praying to the effect,

"That His Majesty would be graciously pleased to order, that "right be done in this matter, and to endorse his Royal declara- "tion thereon to that effect; and to refer such petition, with such "his Royal order and declaration thereon, to the Lord High Chan- "cellor in his High Court of Chancery; and that Sir William "might thenceforth prosecute his complaint therein against His "Majesty's Attorney General, as representing the rights and inte- "rests of His Majesty, as Duke of Cornwall, in the matters "aforesaid; and that for such purpose Sir William might have "leave to make such Attorney General, and also the Lords' Com- "missioners of His Majesty's Treasury, parties thereto; and to "pray and obtain such relief in the matters aforesaid, as, under the "circumstances, should be just."

This petition was admitted by the Crown, who permitted a Bill to be filed, making the Attorney General a party defendant, as representing the rights of His Majesty, as Duke of Cornwall.

The Bill prayed, "That it might be declared, *that Sir William Clayton was entitled to have a new lease* granted to him of the aforesaid premises, for a term of years determinable on the lives of Sir William, and such two other persons as he should nominate, and the life of the survivor of them, *on payment of a fine, computed according to such custom as aforesaid, and by such rate and standard as had hitherto been followed and adhered to in granting renewed leases* of the said premises, or on the payment of such fine as, under the circumstances aforesaid, should be reasonable; and that it might be referred to one of the Masters, either to ascertain what fine ought to be paid according to such custom and standard as aforesaid, or what fine would be reasonable, regard being had to the circumstances hereinbefore stated; and that the said Lords' Commissioners, defendants thereto, might be decreed to grant such renewed lease accordingly, Sir William Clayton submitting to pay such fine as should be ascertained in manner aforesaid; or that it might be declared, that the term of ninety-nine years granted by the letters-patent, therein made determinable on three lives, in compliance with the then existing statutes, was intended to give an absolute interest in the said premises for the whole period of ninety-

nine years, on the terms on which the same were then held and actually renewed; and that such lease ought to be renewed until the full term of ninety-nine years from the date of such letters-patent should expire, *on payment of reasonable fines, to be computed not with reference to the present annual value of the houses* and buildings erected thereon, but *on payment of a reasonable fine, to be computed according to such custom or standard as aforesaid, rr by such other rule as should be just with reference to the actual yearly benefit derived and to be derived by Sir William Clayton from the said premises* during such term of ninety-nine years, and that it might be referred to the Masters to compute and settle the same, and that the Lords' Commissioners might, on payment thereof, which Sir William Clayton thereby submitted to pay, be decreed to grant such renewed lease, and that in any event the said Lords' Commissioners might be restrained, by the order and injunction of the Court, from granting or contracting, or agreeing to grant, any lease or leases, term or terms for years, or other interest in the premises, or any part or parts thereof, which should in anywise impede or prevent their making to Sir William such renewal or renewals as aforesaid, or be in anywise inconsistent with the renewed lease or leases which is or are thereinbefore prayed for.

The Crown appeared to this Bill, answered and gave its answer upon oath.

On the 4th June, 1834, *it came on for hearing before Lord Brougham, who was of opinion that no case whatever had been made out against the Crown, and dismissed the Bill, but without costs.*

HAVING THUS TRACED THE TITLE FROM ITS ROOT, I WILL BEG LEAVE TO CONSIDER THIS CASE IN FOUR POINTS OF VIEW.

FIRST.—ON THE CONSTRUCTION TO BE PLACED UPON THE WORDS OF THE SEVERAL ACTS OF PARLIAMENT, AND ON THE DEALINGS AND TRANSACTIONS THAT HAVE TAKEN PLACE PETWEEN THE PARTIES ENCOURAGED, SANCTIONED, AND CONFIRMED BY THE LEGISLATURE FOR UPWARDS OF TWO CENTURIES.

SECONDLY.—ON THE INFLUENCE WHICH THE AUTHORITIES OUGHT TO HAVE ON THE CASE.

THIRDLY.—ON THE FORCE OF THE REASONS, WHICH ARE THE GROUNDS UPON WHICH LORD BROUGHAM DISMISSED THE BILL.

FOURTHLY.—ON THE FINE DEMANDED.

FIRST.

On the construction to be placed on the words of the Acts of Parliament, and on the dealings and transactions that have taken place between the parties, encouraged, sanctioned, and confirmed by the Legislature for upwards of two centuries.

It is the most natural and genuine exposition of a Statute to construe one part of it by another part of the same Statute, for that best expresseth the meaning of the makers.—Co. Litt. 290. b. 1. s. 9.

The history of the times previous to and at the period of passing the first Statute, gives us ample knowledge of the means, ordinary and extraordinary, then resorted to by the Crown to raise money, and I cannot do better here than refer to Lord Hale's considerations, "touching the amendments of laws," as an illustration of that history. He considered that it certainly would endanger the constitution of Parliament if the hereditary estates of the Crown should become ample enough to enable the King to carry on the government for any length of time without parliamentary aid; yet, on the other hand, he might have revolted at the idea of seeing the Crown so degradingly impoverished, as not to be able either to discharge its public functions or its private expenditure for one moment, without asking a boon from the Parliament.

The Legislature have from the first looked at the rights of the Crown over the tenants of the Duchy estates with a very jealous eye, until the time of passing the last Act of Parliament, which, *in its saving clause, is without example;* and if it can be even contemplated that the fine proposed by the Duchy Officers, to the late Sir William Clayton, for renewal, had any foundation in justice, then, indeed, the time has come when the policy of Queen Anne (who succeeded to a Crown far more impoverished in its possessions than Charles II.), adopted by her Parliament, the *professed* object

of which was not merely to preserve the small remainder of the Royal patrimony, but to effectuate gradually such an increase of it as might restore the diminished dignity of the Court, without in the least endangering the constitution; when, from such contingent accessions as the present, the landed revenue of the Crown may be so augmented as to render it formidable.

The value of this Estate has been made by the means and at the risk of the late Sir William Clayton; and it does not require much wisdom to say, that such an expenditure of half a million of money, united with such risk and responsibility, from which the Estate of the late Sir William Clayton is now suffering, through impending law-suits by the tenants, would have been expended upon a thirty years' lease, or a thirty days' lease, for the one was as equally tenable as the other, if the position maintained by the Crown be a just one. Sir William Clayton and his lessees pinned their faith to his title, to his right of renewal at the accustomed rate, to the solemn guarantee of the Legislature; and I do humbly conceive, that *if all these Acts of Parliament, all the dealings and transactions that are shown upon the title to have taken place between the Duchy, the Parliament, Sir William Clayton and his ancestors, are taken together, without reference to authority, a more strong case for a right of perpetual renewal can scarcely be found.*

This case is widely different from all others upon the question of renewal.

The Courts of England lean against perpetual renewal, even where there is a covenant to renew, unless clearly intended; but in all ambiguous cases (not that I consider this an ambiguous case looking at all the Acts of Parliament prior to Geo. II.) the inclination of the Court of Equity is (or should be) in favour of the lessee, because every deed is taken most strongly against the grantor, as is shown in the case of the College of Manchester *v.* Trafford, 2 Lev. 241. The right of Sir William Clayton I look upon as a springing interest, arising from the first contract made with the Duchy by Lord Moore, and each renewal must be taken to be the original lease continued, for the sake of protecting all legal estates and interests, carved out of the old lease, *upon the supposition of its renewable nature*, and, as was laid down in Furnival

v. Crewe, 3 Alk. 83., repeated renewals should show what was the understanding of the parties.

When a stipulation for perpetual renewal is intended to be made, it is imperative (by the authorities) that some words expressive of that intention, *some phrases*, pointing at perpetuity, should be inserted in the grants.

Now all the grants made to Sir William Clayton and his ancestors are only part and parcel of the various Acts of Parliament confirmatory of each and every of them.

Parliament could, in justice, do no more from reign to reign than confirm all the prior title; and I do humbly consider that each Act of Parliament is not only a stipulation and an encouragement for renewal, but a solemn guarantee under which the tenant expended his money in improvements.

The Parliament has, in various instances, granted relief to the tenants of the Duchy, when they had grievances to complain of, as in the time of Charles II., when he increased the ancient rents.

So in the case of the complaint of the tenants of Kirton, in Linsey, in the county of Lincoln, parcel of the Duchy, also before stated, when a recommendation was made by the House to the Lords' Commissioners of the Treasury, that these tenants should be protected against any illegal disturbance, by colour of any pretended grants.

Another instance of the care which Parliament has taken of the rights of the tenants, is shown by the Journal of the House, when the Bill was introduced, in the 29th Charles II.; and many other cases might be cited, showing the controul which the Parliament has always exercised over the Duchy lands since its interference in the reign of James I.

The dealings and transactions between the Duchy and Sir William Clayton and his ancestors I need not recapitulate; they speak for themselves. All the grants have been made upon terms highly beneficial to the Duchy, and highly disadvantageous to the lessee. *It cannot be said there is no mutuality.* The improvements are beyond all previous calculation. All the Acts of Parliament up to the 33d George II. contain *special language, implying per-*

petual *renewal*, according with the intention so solemnly and explicitly noticed by the Legislature when it first interfered.

Upon these Acts of Parliament a principle of dealing and good faith has been established, upon which the tenants have dealt with the property and expended their money. Sir William Clayton has a higher right than an ordinary tenant would have against an ordinary landlord; and I do submit, without resorting to any strained inference or conjectural construction, or to particular equivocal words, that the whole, with the repeated renewals which have taken place, is very strong evidence that perpetuity of lease was intended. The intention must be gained, and I think it is sufficiently gained; and that, however inconvenient to the lessor, it is too authoritatively received to be deemed of that degree of public inconvenience which will justify the being considered otherwise than as enforceable, though not strictly at law, taking the Acts of Parliament as parallel cases to explicit covenants for renewal. (See Sweet *v.* Anderson, before the House of Lords, in March, 1722—Earl of Ross *v.* Worsopp, before the same tribunal, March, 1740, see 4 Bro. P. C. 411—and Magenis *v.* Magenis, December, 1745.)

Second.—*On the influence which the authorities ought to have on this case.*

I have already said, that this case is widely different from all others upon the question of renewal; nevertheless, the authorities upon that question bear me out in my argument.

The arguments submitted to me with this case, upon which great labour has been given, are chiefly directed to (what is termed) the *tenant-right of renewal.*

Tenant-right of renewal in England, as applied to general cases, is neither a certain nor contingent interest in law, because it depends upon the will of the lessor whether he will renew or not; but in cases of leases from the Crown and Ecclesiastical Corporations, *where the tenure is of ancient date, and the tenant is willing to pay the fine, this sort of right has sprung up and been contended for by the lessees or holders of the ancient leases, as an undoubted claim or prescriptive privilege.*

The law of England is unfavourable to leases in perpetuity; looking at a perpetuity as a thing odious in law, destructive to the

common wealth, that would put a stop to commerce and prevent the circulation of the riches of the kingdom, *and, therefore,* is not to be countenanced in equity. See 1 Vern. 164.—I have thought it proper *in this case* to explain *why* the law is unfavourable to perpetuities; but it has, nevertheless, long been an established practice, to consider those who are in the possession of lands, under leases for lives or years, as having an interest beyond the subsisting term; and this interest is usually denominated *the tenant-right of renewal.*, which, though as I before have said, not any certain or even contingent estate, (there being no means of compelling a renewal;) yet it is so adverted to in all transactions relative to leasehold property, that it influences the price on sales, and is often an inducement to accept of it in mortgages and settlements. This observation is more especially applicable to leases from the Crown, the Church Colleges, or other Corporations, and, indeed, from private persons, *where the tenure is of ancient date, and there have been frequent renewals, or what are in effect the same, successive enlargements of the term in being by reversionary grants, by which the lease is never suffered to run out entirely, each renewal being not properly a new lease, but only a continuation of the first lease.* See Randall *v.* Russell, 3 Mer. 190; also Co. Litt, 290 b. n. 1. s. 9.

In all these kind of estates, the tenants, by custom, have a sort of a tenant-right of renewal. In the case of copyholds, the freehold remains in the Lord, and the copyhold tenant is considered as tenant at will, according to the custom of the manor, and, therefore, he has no right beyond that of a mere tenant at will, but such as the custom gives him.

This *tenant-right of renewal,* (as it is termed,) however *imperfect* and contingent in its nature, being still a thing of value and a real benefit, has been protected and recognized by our Courts of Equity, and when those who are entitled to its incidental advantages, whether by purchase or other derivation, are disappointed of them by fraud, imposition, misrepresentation, or *unfair practice* of any kind, it is fit and reasonable that this injury, which may in many instances be of great extent and magnitude, should have redress, as well as that there should be remedies, when rights more perfect and certain are violated. Accordingly, our Courts of Equity have so far recognized the *tenant-right of renewal,* as frequently to inter-

pose in its favour, by decreeing that new or reversionary leases (gained by undue means or supposition of the tenant-right of renewal) should be for the benefit of the persons interested in the ancient lease, and that, consequently, those who procured such new leases, and were thereby legally possessed of them, should be trustees for that purpose.—See Randall *v.* Russell, 3 Mer. 190. Hardman *v.* Johnson, id. 34. Fitzgibbon *v.* Scanlan, 1 Dow, 269. Owen *v.* Williams, Amb. 734.

Lord Coke divides the cases on this head into three classes. *The first,* where the renewal has been obtained by persons having no beneficial interest in the old lease, and no connexion with the lessee, and has been obtained by a suggestion of what was false, or a suppression of what was true. *The second,* where the parties obtaining the renewal have no beneficial interest, but are connected with the old lessee as guardians, trustees, or executors. *The third,* where the persons renewing have only partial and limited interests as tenants for life, mortgagors, or mortgagees; *in all the cases the parties renewing have been uniformly declared trustees for the persons beneficially interested in the ancient lease, either wholly or in part, according to the particular circumstances of the case;*—the Court presuming that the new lease was obtained by means of the connexion with or reference to the interest in the ancient lease. The cases on the tenant-right of renewal are numerous; one of the most important is that of Rawe *v.* Chichester, Ambler 715. Richard, Rawe had an estate called *Prince's Meadow,* in the parish of Lambeth, *held* by lease *under the Duchy of Cornwall.* Upon the 11th December, 1716, he obtained an additional term of sixteen years, to be granted to Joshua Sherwood, in trust for himself, and was possessed of other leasehold estates in the county of Cornwall. He made his will, and devised and bequeathed these estates to his wife, for her life.

The testator died in 1718, being, at the time of his death, in possession of a small piece of ground, *not* comprised in his lease, but adjoining to Prince's Meadow, being part of an estate called *Collier's Yard,* belonging to the Duchy of Cornwall; and application being made by another person, for a lease of that piece of ground, upon the merit of the discovery, Mrs. Rawe likewise applied, stating her right under Mr. Rawe's will, and prayed to

have a lease granted to her of that piece of ground, and that the same might be consolidated with the premises comprised in Mr. Rawe's lease; and on the 17th of February, 1719, she obtained a lease of the piece of ground, which was granted to Richard Agar, in trust, for twenty-seven years, which was the time when the lease of Prince's Meadow would expire. No fine was taken. A rent of 40*s.* a year was reserved. On the 6th of April, 1734, *Mrs. Rawe obtained a renewal of Prince's Meadow, and Collier's Yard, to Richard Agar, in trust for her,* which would expire at Lady-day, 1735; and upon the 22d of June, 1749, she obtained *a further renewal* for sixteen years.

The bill was filed by the children and next of kin of Richard Rawe, to have *the benefit of the renewals, and the lease* assigned to them.

The Lord Chancellor:

" It may be laid down as a rule, that whoever has a lease, has an interest in the renewal of it. It is often the subject of settlements, and of the jurisdiction of this Court, though the lessors are not bound to renew; yet, when done, it is a continuance of the old lease. If trustees, mortgagees, and persons interested, obtain renewal, the new lease is always subject to the trusts and limitations of the old lease. Many cases have been determined in support of this doctrine. Lord *v.* Holmes is a very strong authority; Holt *v.* Holt, 1 chan. cas. 190, (which seems to be the oldest case), Witter *v.* Witter, 2 P. Wms. 90, which was said to be contradicted by Mason and Day, Prec. Ch. 310, but in fact was not, being a question between heirs exparte paternâ, and exparte maternâ, upon a renewed lease, which could not go to the heirs exparte paternâ, and so determined by Lord Hardwicke, in Mason *v.* Shove, July 28, 1739, 1 Atk. 480. In Lord Hardwicke's MS. note at the end is seen, ' *Determined on the reason and authority of Mason* v. *Day.*' Ruch *v.* Sandford, Sel. Ca. in Cha. 61, called ' Rumford Market.' The case of a lease for years at a rack-rent. The general rule was not disputed, but defence set up from the particular circumstance of the lessor having refused to renew with the infant. Idle *v.* Fitzgerald, was determined on the particular circumstances of the case, and did not affect the general rule.

" It appears that Frances Rawe obtained the first additional

term UNDER THE TENANT RIGHT, and therefore within the general rule, unless any thing particular to take it out. It does not appear that the testator meant to give his wife *the right of renewal separate from the existing lease. It must be very plainly expressed to give her such an interest.* He had very lately renewed; and if he had so intended, it is most probable he would have said so; the words are awkward, but he certainly meant that his brother's children should have the benefit of the estate after the death of his wife. *When an additional term is granted, the old term may be said to be still in being,* and then the will operates upon it. It is giving too much weight to the awkward words, to give them a different construction. His Lordship referred it to the Master, to enquire what fine she paid; and whether, in consequence of such renewal, she received any fines from the tenants—the latter were to be deducted out of the former. The fine to be apportioned between Frances Rawe and the reversioners, according to their interests, and she was to have interest at 4*l.* per cent. to be paid out of the estate, and to hold the estate till paid."

" *As to Collier's Yard,* originally granted to the Woodmonger's Company, to build a barge house, &c., and was always excepted out of the lease of Prince's Meadow, *first granted to Frances Rawe,* and never was part of Richard Rawe's personal estate, decreed for *her* next of kin. See Taster *v.* Marriott, Ambler, 668, and cause there cited. See also, Winslow *v.* Tighe, 2 Ball. & B. 31. Also, Featherstonehaugh *v.* Fenwick, 17 Ves. jun. 302; Palmer *v.* Young, 1 Vern, 276; Keeche *v.* Sandford, Sel. Ch. ca. 61.

The next important case on this learning, is that of *Lee v. Vernon,* heard on appeal to the House of Lords, May 11, 1776, 7 Bro. P. C. 10, where *Lord Strange* held as against a stronger applicant for a reversionary lease, to commence on the expiration of the existing one, that the *tenant-right, or lord's favour of renewal,* was in the holder of the latter. In this case, which was also *property held under the King as Duke of Lancaster,* the north auditor of the Duchy, in his report, stated that he did not know in whom *the tenant-right of renewal was,* by reason that the existing lease contained no covenant for inrolment. Thus admitting a tenant-right of renewal in whoever held the lease.

So, if a tenant for life *sells the right of renewal,* the purchase

money shall go to the uses of the settlement, as in the case of Owen *v.* Williams, Amb. 734. Kyffin Williams held a *leasehold estate near Chester, under the King as Earl of Chester,* which was let out to under lessees, upon fine, and small rents. He died, and by will devised it to his wife for life. The lease being near expiring, and the estate lying near Chester, and giving a party interest there, Lord Grosvenor (A STRANGER,) applied to the Treasury for the grant of a reversionary term. Mrs. Willlams, the lessee, also applied. Lord Grosvenor having the better interest, the Treasury were disposed to oblige him, *but recommended him to make terms with Mrs. Williams. Accordingly, he offered her £3,000. which she accepted,* and the reversionary lease was granted to Lord Grosvenor, *in whom Mrs. Williams' lease had then become vested.*

In this case, the report of the Surveyor-General, upon Lord Grosvenor's petition, states, that *he never advised the granting leases to persons having no claim or equitable interest in the premises, in prejudice of the tenants in possession;* this report was in favour of Mrs. Williams.

The case of *Watson* v. *The Master of Hemsworth Hospital,* 2 Vern. 596, approaches the present case in many respects, and embraces the opinions and judgments of the Lords Ellesmere, Clarendon, Cowper, and Eldon. Watson had purchased a lease which was expiring, and had laid out £2,000. in improvements; brought his bill for a new lease, the Master refusing to renew. The lands belonged to the Hospital, the master of which was empowered only to grant leases for twenty-one years, and no longer, at a rent certain, which was not to be raised, nor more than three years rent taken for a fine; and under a decree of Lord Coventry, a lease was made by the hospital in 13 Charles I. to the Blackiston's, for twenty-one years, at a rent of £120., which lease was renewed from time to time, and purchased by Watson, who in 3d James II. obtained a renewal, and the bill prayed a renewal at the old rent of £120., and a fine of £100., or *such fine as should be adjudged reasonable with regard to his improvements;* and that the Hospital should be obliged to renew the lease, from time to time, for twenty-one years, at the old rent, and such fine as the Court should judge reasonable. *Lord Chancellor Cowper* decreed that Watson was not entitled to have leases at any certain fine, or at any certain rent,

but that *he ought to have beneficial leases made to him, as well in regard to the constitution* (of the Hospital) as also of former decrees made by the Lord Keeper Coventry, and Lord Chancellor Clarendon, and the usage since; *and likewise in respect of what Watson had laid out in building, and other lasting improvements, since the last lease made by the Hospital,* BEYOND THE COVENANTS IN SUCH LEASES, and what the annual value of the premises were reasonably worth to be let at; and that the fine to be paid was not to exceed three years' value; *and in the ascertaining such rent and fine, regard was to be had to what had been expended by the lessees in building, and other lasting improvements, beyond the covenants in the leases, and beyond the last leases;* and he referred it to the Master to certify the value of what had been so laid out in improvements; and when that was ascertained, then the fine and rent, as should be thought reasonable, was also to be ascertained.

The Master's report stated the reserved rent to the Hospital £132; *the annual value of the premises, at the lessee's entry,* £250; that £2,000. had been laid out in improvements; and that the premises were then worth, to be let, £371.

The lessee was allowed £1,500. for improvements, and a decree was made in 1710, directing that Watson should pay £705. for a fine; and the Court being fully satisfied that Watson had *a tenant right of renewal, and ought, therefore, to have a beneficial lease made to him* at £150. a year.

This rent and fine was thus calculated:—

The fine was taken upon the annual value, at the LESSEE'S ENTRY (£250.) The rental of £150. calculated upon the improved rent of £371. was thus made out:

Reserved by new lease	£150. a year
Taken at £190.	40
Allowed for improvements £2,000. equivalent to	12½ of rent
Allowed for *right of renewal* upon which the fine was calculated	60
Total improved rent	£371

This lease was granted accordingly, and *renewed from time to time until* 1791, when the last lease was granted, and upon its expiration, the Hospital refused to renew. A bill was filed to compel

a renewal, but the Master of the Rolls took a different view of the lessee's right, on the ground that the decree made by Cowper, declared that when the before-mentioned new lease should be made to Watson, *it was to be in full of all claims by him.*

I do not find any such declaration in the Report of that case made by Vernon, and which professes to be extracted from the Reg. Lib. This bill was however dismissed. The Master of the Rolls observing upon Lord Cowper's decree, that *it was only on account of the lessee's expenditure on the estate, and to reimburse them for that expenditure, that a renewal was deereed, and that a beneficial lease in it must necessarily be, in order to answer that purpose*; and that the declaration before stated, made it clear that the plaintiff had no claim for leases renewable for ever. He then goes on to say, " It is true Lord Cowper declared himself fully satisfied that " the plaintiff *had a tenant-right of renewal,* and ought, therefore, " to have a beneficial lease made to him. What is meant by a " *tenant-right of renewal,* as here applied, I do not understand, in- " dependently of custom, and merely as between landlord and " tenant. It does not impart any positive right of compelling a " renewal. It does not appear to me how *the preference which is* " *ordinarily and properly given by public bodies to their actual tenants,* " and *which, I trust, in this case will be given,* can, in an individual " instance, have grown up into a compulsory obligation. The main " ground, and in my apprehension, *the only substantial one,* on " which the claim to a renewal rested in 1704, was the expenditure " upon the estate. *The greatest part of the proceedings in the cause,* " *relates to the adjustment of its amount. The rent was fixed with* " *reference to it, and so fixed as to provide for the reimbursement of* " *the tenant within the term for which the lease was to be renewed.*" And, under such circumstances, he dismissed the bill. See Watson *v.* Master of Hemsworth, 14 Ves. 324. See also, Blackiston *v.* Same, Duke's Ch. cases, 49.

The case of Allan *v.* Bower, 3 Bro. C. C. 149, was for an injunction; and in a note of Sir Samuel Romilly's, attached to the report of that case, being his view of Lord Thurlow's judgment in that cause, he says, " His Lordship was clearly of opinion that " *the injunction ought to be continued,* and that it would be for the " interest of all parties to refer it to the Master, to enquire and

" certify what interest in the farm it was intended should be " granted." The rule by which the Master must proceed in the enquiry was very plain, for *the plaintiff would be entitled to such a term of years as was of the value of the money which he had laid out in improvements upon the farm.*

The case of the Attorney-General *v.* Smith, 2 Vern. 746, also approaches the present case in a relative position. *Mr. Smith had recovered an estate* for the charity, at his own expence, and had a lease decreed him by Lord Coventry, *for ninety-nine years, determinable on three lives,* under the rent of one-third part of the then improved value, and to be renewed from time to time, for ever, without any fine. The Lord Chancellor Harcourt, upon a bill filed to compel a renewal, decreed that Smith *should be admitted to renew his lease, toties quoties, for ninety-nine years,* determinable on three lives, at one-third part of the improved value.

The Master of the Rolls, in giving his judgment in *Watson* v. *The Master of Hemsworth,* noticed this case, and seemed to consider *the justice of Mr. Smith's right of perpetual renewal "on the score of his services to the charity."*

In Pickering *v.* Vowles, 1 Bro. C. C. 197, the Lord Chancellor observed, " That *Tenant-right,* as it is called, though an improper, " *has become a technical term.* In the west, many estates derive " their value from renewals. *The Crown also has many estates of* " *the same nature. The right of renewal has obtained the name of a* " *tenant-right.*" See also James *v.* Dean, determined on appeal by Lord Eldon, and affirmed also by his Lordship on a rehearing. 11 Ves. 383, and 15 Ves. 236, Hone *v.* Medcraft, 1 Bro. C. C. 260.

In Collet *v.* Hooper, 13 Vesey, 258, *the Master of the Rolls admits the usage to renew church leases.* In Abney *v.* Miller, 2 Adkins, 593., Lord Hardwicke observes, that " *The Court of* " *Equity does regard the custom of renewal in some cases,* because if " such an estate is given *upon trust,* and the estate so given is re- " newed after the death of the donor, yet the Court considers it as " governed by the old trusts." See also Pierson *v.* Shore, 1 Ankins, " 480. " *Hence public bodies generally renew with the person having* " *the legal estate, and seldom suffer any trusts to appear on the lease,* " *lest they should be implicated in the execution of them.*" They also invariably require the old lease to be given up before they

grant the new one; and after they have obtained possession of the surrendered lease, they never part with it, or produce it, nor can its production be compelled.

In Equity the renewed lease will be taken to be the original lease, continued for the sake of protecting all legal estates and interests, carved out of the old lease, upon the supposition of its renewable nature. In Randall *v.* Russell, 3 Mer. 190, Sir William Grant says, that "the ground commonly stated on which a renewed lease becomes subject to the trusts of a will disposing of the original lease is, that the one is merely an extension or continuation of the other." See also Hardman *v.* Johnson, 3 Mer. 347.

Lord Redesdale explains the meaning of the parties to these sort of contracts in his judgment in Lennon *v.* Napper, 2 Scho. & Lef. 682. *His Lordship* observes, that it is to give and secure a continuance of the tenure and rent and payment of the fines, and to prevent a conversion of the tenure by enjoyment, without renewal, into a fee-farm; for notwithstanding the payment of rent, if there was to be no renewal from time to time, the presumption of a fee farm would arise. In the original contract for such leases, the object on the part of the landholder is the enjoyment of a clear rent, and, in many cases, an occasional fine, seldom more than half year's rent, sometimes very small, with the consequences of the fee remaining in him, and *on the part of the tenant* the contract is for *the perpetual enjoyment of the land, and an encouragement to make such expensive improvements as could not be expected to be made but with a view to such continued enjoyment.*

In Rawstorne *v.* Bentley, 4 Bro. c. c. 415., Elliott was seized of a piece of ground of the Manor of Highbury, in which *no lease can be granted* of copyhold lands holden thereof *for more than* 21 *years.* He demised to Bird for 21 years, at a rent of £1. per annum, and there was a covenant contained in that lease, on the part of the lessor, before the end of the term to renew for 21 years, and so on from time to time, until the whole should be made 99 years; and the lease contained common covenants. A bill was filed to renew. Sir R. P. Arden, *Master of the Rolls*, under the circumstances of the case, thought the plaintiff entitled to a renewal. *He observed, "that the cases in Ireland all depended upon the circumstances of their being fines, payable at certain times."* They are mentioned in

Vern. and Scriv. Rep. It was held in Ireland, that if the lessee would pay the fine, and interest for it from the time it had become due, the Court would indulge him with a renewal; and after expressing his agreement with the opinion of Lord Thurlow, which he gave in the House of Lords, in Bateman *v.* Murray, he proceeds to comment upon this case, and says, "THE GROUND AT FIRST WAS VACANT GROUND, AND THE PLAINTIFF HAD LAID OUT £1,000 UPON IT. THE LEASE WAS INTENDED TO BE FOR 99 YEARS; THE ONLY REASON IT WAS NOT SO WAS, BECAUSE IT WOULD NOT BE LEGAL UNDER THE CUSTOM. IT IS IN EQUITY A LEASE FOR 99 YEARS, AND HE DECREED A RENEWAL.

The following note is appended to this case. "It certainly does appear that *the intention of the original parties* was, that the tenant should *consider himself as having an interest for* 99 *years*, and that *the custom of the Manor was the only obstacle to that extended term being granted;* and *it seems equally clear, that a reliance on such mutual understanding, and upon the covenants, induced the plaintiff to lay out so large a sum as* £1,000 *on ground theretofore vacant.*

The cases in the House of Lords differed from the judgments of the Courts in Ireland. See Vipon *v.* Rowley, Dom. Proc. 1774. Kaine *v* Hamilton, 1776. Bateman *v.* Murray, 1779. The determination of the last case gave great dissatisfaction in Ireland, and produced an Act of Parliament, passed 19 & 20 Geo. III. c. 30, which revived the old Equity, and provided that in all cases of mere neglect, where no fraud appears to have been intended, and there has been no dereliction on the part of the tenant, by neglecting or refusing to renew, after the landlord has demanded the fine, Courts of Equity shall relieve, on an adequate compensation being made. See Margrath *v.* Lord Muskerry, *ib.* 1. Ridgeway, P. C. 493. Jackson *v.* Saunders, 1 Sch. & Lef. 682 et seq., affirmed in Dom. Proc. 2 Dow. 437, and Lennon *v.* Napper, 2 Scho. & Lef. 682 et seq.

In the case of Bayle *v.* Lysaught, Vern. & Scriv. 135, & 1 Ridgw. P. C. 411, The principle that governs cases of this kind was laid down. *Also that Courts of Equity ought to relieve against the forfeiture, because the fine is the principal and essential object, and the renewa. is only to enforce the payment.*

It should be observed, that the fine was fixed, and suited to the value of the land *at the first taking*. See also the cases of O'Neil *v.* Jones, 1 Ridgw. P. C. 170.

The case of Cooper *v.* Booth, Cowp. 819, is deserving notice, as applicable to the present case, not only upon the merits of that case as compared with those of the present, but as containing the opinion of Sir Samuel Romilly, upon the circumstance of there being no covenants for proper cultivation of the land, as in the present case there is no covenant to build. This case was sent to law by Lord Bathurst, and adjudged by the King's Bench in Easter term, 1778. It was that of a lease for three lives, with covenant to renew.. *There had been four successive renewals,* all containing the same covenant; and the decision of the Court was, that the covenant ought to be continued. *Lord Mansfield and the Judges Willes and Ashurst founded their opinion on the conduct of the parties in so often renewing* with a covenant of renewal. *Lord Mansfield's* reasoning on the covenant was wholly this: His words are,—"*The parties have put their own construction, for there have been frequent renewals,* and in all of them the covenant of renewal had been uniformly repeated. How, then, shall the Court say the contrary? *Mr. Justice Willes's* argument was to the same effect; for he observed, "That *the conduct of the parties seemed to difference this case from all others.*" *Mr. Justice Ashurst* also grounded himself on the conduct of the parties, saying, that "*As there had been four successive renewals, the lessor himself had put his own construction upon the covenant, and therefore is bound by it.*"

The case was decided at law, partly on the ground of an allegation, that such a covenant had been uniformly inserted in every new lease for a long period of years. See Moore *v.* Foley, 6 Ves. jun., 232; and Dowling *v.* Mill, 1 Mad. 541; and Hammett *v* Yielding, 2 Sch. & Lef. 566; & City of London, *v.* Mitford, 14 Ves. 41.

In the case of *Iggulden* v. *May,* 9 Vesey, 325, Lord Eldon, in delivering his judgment, said, "That *with reference to the fact that there have been renewals for almost two centuries upon circumstances of conduct, it would be against conscience to decide against the renewal,* and he retained the bill, with liberty to bring an action at law; and Sir Samuel Romilly, in his argument in the same case, observes,

that the question is *upon the intention of the parties.* Such a covenant is not to be reprobated. The greatest part of the land in Ireland is held under leases of this kind. *It cannot be said there is no reciprocity. Suppose barren land upon the sea shore producing nothing, and a person takes it upon speculation, to lay out money upon it in building, with an option to give it up at the expiration of* 18 *years. or to have it, if he pleases, for ever—that would be a beneficial contract for both the lessor and the lessee.* The mere circumstance that there is no other covenant, goes a great way to shew the intention for perpetual renewal, independent of the verbal agreement; for *no man, having in his contemplation to become again the owner, would grant a lease without covenants for proper cultivation,* &c. In the present case there are no such covenants in any of the leases to the Clayton family. In *Tritton* v. *Foote,* even penalties were imposed upon a particular mode of cultivation, viz. ploughing up meadow land. All words in a deed are to be taken most strongly against the grantor; *and, in the present case, the Acts of Parliament* and consequent grants, must be taken together. The Court cannot merely, because the expression is "covenants," in the plural number, and "grants and articles," strike the word "covenant" entirely out of the deed; it should be executed as far as possible. *The note says,—"Lord Thurlow* seemed strongly inclined that a Court of Equity ought not to enforce a covenant such as this, under all the circumstances, appeared to be," and retained the bill, with liberty to bring an action upon the covenant. The parties did not try the action, and the cause coming on again, Lord Thurlow directed an inquiry,—What were the situation and circumstances of the premises, and what would have been a reasonable bargain to have been made between the parties at the time? The Master to state all the circumstances, and this to be without prejudice. That inquiry was not prosecuted. In *Bayley* v. *The Corporation of Leominster,* 3 Bro. c. c. 529, the ground was, that the tenant had suffered two lives to drop, instead of coming at the expiration of the first. *Who would lay out money in building, upon a lease of only* 40 *years?* As to the acts of the parties, even Lord Alvanley seems to think some circumstances may influence the judgment of the Court, noticing the distinction between the cases in England and Ireland. See *Baynham* v. *Guy's Hospital,* 3 Ves.

I. 295. Many facts may be supposed that might very much influence the judgment of the Court. Suppose it was represented to a purchaser to be a perpetual lease, and he purchased upon that ground. It is certainly difficult to say the last lease is to be construed differently from the first; but, *from the conduct of the parties for a century, facts may be presumed* as to the first lease, *expenditure by buildings to be erected, &c. to warrant this construction.* Before *Cooke* v. *Booth* can be overruled, the question ought to go to law.

The case of *Furnival* v. *Crewe,* before Lord Hardwick, 3 Alk. 83, was, that where the leases had been twice renewed, and each lease contained the same covenants for renewal. *Lord Hardwick observed, "the repeated renewals shewed the intention of perpetual renewal; besides which, there were fines to be paid upon every renewal, at the option of the lessor.* So that the covenant for perpetual renewal was not open to the same objection as in most other cases.

In *Tritton* v. *Foote,* it was optional in the lessee, whether he should renew, and that *no fine should be paid;* and *Lord Thurlow* decided against perpetual renewal, on the ground that there was *no mutuality, no fine was to be paid the lessor on renewal.*

Lord Mansfield and two others of the four Judges, in Cook *v.* Booth, decided not upon the circumstances of the lessees having an option, but upon the conduct of the lessor and his representatives, having four times renewed.

This tenant-right of renewal is peculiar to Ireland, and its history is thus described by Lord Lifford, in the appeal case of *Boyle* v. *Lysayht*:—"How long it has prevailed, I do not pretend to say; it might have been first introduced in the north; but in the south, I believe, it has prevailed since the time of the great Earl of Ormond, who, in order to people his vast estates in that part of the kingdom, and to invite a respectable and improving tenantry, introduced this tenure. It had the effect he desired; and in the nature of the thing, these leases have a tendency to create a respectable and improving tenantry. It obtained till it had acquired these tenants great respect, and very valuable properties; inasmuch as they were considered to have a perpetual interest. In this I am warranted, not only by the express words of the statute, but by

what it recites to have been decided by courts of equity, and countenanced by the declaration of judges. These leases then were considered as perpetual interests, and upon that principle they gained ground, and became a fund for settlements of every kind, for mortgages, and other securities for money. If a man had one of these leases, there would have been no more doubt of lending him the money, than if he had the fee. For some time, however, great difficulties did arise in courts of equity, concerning these leases. Tenants, like other men, are subject to that misfortune attending on human nature, of neglecting their own affairs. I believe experience and observation will justify the remark, that mankind in general are extremely negligent about what concerns themselves; partly by business of another kind, partly by pleasure, they are diverted from looking into their own private affairs, and paying them that attention which they require. Hence it happened that tenants neglected to make renewals upon the fall of the lives, and were guilty of great laches; and landlords, therefore, brought ejectments, and the tenants resorted to courts of equity for relief; and courts of equity, where the breach was made up by an adequate compensation, thought that they were entitled to relief; still considerable difficulties arose in estimating what should be a compensation, until that great man, *Lord Chief Baron Gilbert*, who presided in the Court of Exchequer in this kingdom, struck out the compensation of septennial fines, considering the life as equal to seven years, upon the idea of the act which says, that if a man is not heard of for seven years, he is to be presumed dead. That compensation is a fine for seven years, with interest accordingly." Here it may be proper to remark, that the tenure in question, under the Duchy of Cornwall, commenced at or nearly the same period that this Irish tenure commenced. In the case of Anderson v. Sweet, 1717, he decreed a renewal to the tenant upon payment of septennial fines and interest, and the decree was affirmed by the Lords in 1722. Vide 2 Brown, p. c. 430, and 1 Ridg. Par. Ca. 178.

In the case of *Doctors' Commons* v. *St. Paul's*, it was held, that though there was a contract for renewal, the Court would not decree one; but this decree of *Lord King's* was reversed in the House of Lords, and it was ordered that the Dean and Chapter should grant a new lease, upon the same terms and with the same cove-

nants (except the covenant for renewal) with the former lease.—*Bettesworth* v. *Dean and Chapter of St. Paul's*, 3 Bro. P. c. 389.

Somerville v. *Chapman*, 1 Bro. c. c. 61, was a case to compel the Master of St. John's Hospital to renew a lease held of the Hospital, upon payment of one year's rent, by way of fine.

From 1713 to 1738 no larger fine than £60 had ever been paid. In 1738, the estate being much improved, a doubt was entertained whether the Hospital could take a larger fine without the consent of the lessee. Jones offered £600, and it was decreed that the Hospital might take it. In 1763 he offered £1,000, which was refused; but Lord Hardwicke, 26th March, 1753, decreed that the Hospital should grant a renewal, upon payment of that sum. A new lease was granted accordingly, and Jones granted many under-leases, with provisions to renew, upon payment of one year's rent, whenever the Hospital should renew to him. Jones died, having devised to trustees, who applied for a renewal, which was refused. *Mr. (afterwards Lord) Mansfield* said, The single question is, *whether the Hospital is or is not bound to renew, upon payment of such fine as this Court shall think reasonable. In considering the proportion of fines, the present situation of the estate is not to be looked at, as the improvements were in contemplation at the time of entering into the covenants.*

The Lord Chancellor said, that the only line would be, to refer it to the Master, to report what the fine should be. The contract with the under lessees is only that they shall be renewed when the original lease is.

These lands were, in the time of George III., considered of very little value, and were long since* given up to the Parliament; and though last, not least of the authorities that I have quoted, I beg to call attention to the speech of *Mr. Burke,* in the House of Commons, upon his motion for leave to bring in "A Bill for uniting "the Duchy of Cornwall to the Crown; for the suppression of "certain unnecessary offices belonging thereto; *for the ascertain-"ment and security of tenant and other rights;* and for the sale of "certain rents, lands, and tenements within or belonging to the "said Duchy; and for applying the produce thereof to the public "service."

* In the reign of James I., when a constitution was framed, establishing a perpetuity of interest in the tenant. See Statute 21 James I. 1623.

In the course of that speech, which may be found in the third volume of his works, p. 265, *Mr. Burke* observes, that these principalities [Wales, Duchy of Lancaster, County Palatine of Lancaster, Cornwall, and Chester] are so far from contributing to the ease of the King, or to his wealth or dignity, that they render both his supreme and his subordinate authority perfectly ridiculous; that if the Crown has any favourite name or title; if the subject has any matter of local accommodation within any of these jurisdictions, he meant to preserve them and to improve them, if any improvement could be suggested. As to the Crown—*reversions or titles upon the property of the people*—he proposed to convert them from a snare to an independence, into a relief from their burthens. He proposed, therefore, to unite all the five principalities to the Crown and to its ordinary jurisdiction; to abolish all those offices that produce an useless and chargeable separation from the body of the people. To compensate those who did not hold their offices at the pleasure of the Crown; to extinguish vexatious titles by an Act of short limitation; to sell those unprofitable estates which support useless jurisdictions; and TO TURN THE TENANT-RIGHT INTO A FEE, *on such moderate terms as would be better for the State than its present right, and which it was impossible for any rational tenant to refuse.*

The principles, I take it to be, which govern this case, are, That because of repeated renewals, encouraged and guaranteed by the Legislature; because of all the dealings between the parties for upwards of two centuries, and in particular the dealings in 1777, *and the purchase made of the rent from King Charles II. by Sir Robert Clayton; because a price or consideration has been paid for renewal from time to time, and the value of money is especially to be looked at when those fines were paid, and more especially in the* 17*th century; and because the renewal is not optional to the lessee, but is peremptory upon both parties; therefore the right of renewal is perpetual.*

THIRDLY. *On the reasons which are the grounds upon which Lord Brougham dismissed the Bill.*

It is with much pain that I find myself forced into a commentary upon the judgment of the learned Judge in this case, which must be equally painful to his Lordship to read, if my argument

has any weight—looking at the value of the question, and the hundreds of persons that judgment has consigned to ruin and litigation.

The talents of the learned Judge are so powerful, as to throw any that I may possess into obscurity. I have, nevertheless, a duty to perform to my clients, which is paramount to all other considerations. Those clients are younger children, whose sole dependence was upon this property, which has been (as I maintain) unjustly taken from them. But this is not the only injury inflicted: the eldest son, Sir William Robert Clayton, is liable, upon the covenants of his father with the tenants, to the enormous amount of half a million of money, by reason of the tenants' estate being also gone; that estate which the tenants had so recently built with their own money, under the impression that they had good estates in the term granted them, as other tenants had in their building leases, and relying upon the covenants of Sir William Clayton. If the learned Judge has committed an error of judgment (and we are none of us infallible), the painful duty of shewing that error has fallen upon me; and I am sure, if the learned Judge be convinced that there is error, he will readily acknowledge it; for it may be truly affirmed, that when a Judge acknowledges error, he elevates his character, whilst he seems to be only discharging his conscience. If, on the contrary, my argument is without foundation, I hope for his indulgence—that he will impute it to the ardour of the counsel for the client, and not to any personal feeling. I rely for my argument alone upon the great experience I have had as a conveyancer, without which I would not have looked at a case of such extraordinary difficulty and magnitude.

I think it unnecessary here to enter upon the observations made by the learned Judge, upon the petition of right presented in this matter, because I do not think it was a wise proceeding.

The learned Judge commences with rejecting the case of Floyd *v.* Buckland, 2 Freeman Rep. 268, pla. 337, cited by the Counsel for Sir William Clayton. His Lordship admits the principle laid down in that case, but denies its applicability here. I cannot, however, do better than use his Lordship's words: "I shall again "resort to the authorities that have been cited; their real applica- "bility to this case I really profess myself as yet not very able to

" comprehend them, because they seem to me to lay down propo-
" sitions of law which don't in the slightest degree admit of denial;
" as, for example, in the case of Floyd and Buckland, which was
" cited to-day, that if I lead a man by parole promises, under-
" standing, hints, shrugs of the shoulder, smiles of the countenance,
" winks of the eye, or in any other way. I will put it much larger
" than Floyd and Buckland put it; but if I in any way, by writ-
" ing, parole, by words, by gesture, or dealing, in any manner
" or way, by myself or through my agent, inducing an individual
" to expect a lease of my property, *and to lay out his money on my*
" *property* on that expectation, that in equity I am lessor and he
" is lessee; the Court will hold I have granted the lease, because
" I ought to have granted it, and they will compel me to grant a
" lease. Does it follow, because I have, by any or all of those
" means, induced an individual to lay out his money on the expec-
" tation of a lease for thirty-one years, determinable on three lives,
" or ninety-nine years, determinable on three lives, and he has
" laid out his money expecting that at the end of that ninety-
" nine years I shall add ninety-nine more, which is the pre-
" sent case; or expecting, that as these three lives should drop in,
" I should allow him to fill up for ever (which is another part of
" the case); is it, therefore, because he has formed an unreasonable
" expectation, that I am bound by that in this Court? Under the
" authority of Floyd and Buckland—a totally different case—a case
" of no lease granted, yet leading to an expectation of it—does
" it follow that I am bound, therefore, to fulfil expectations
" which, I say, are unreasonable and groundless in themselves; or,
" at all events, as against me are groundless expectations, and
" whereof this Court will not, and cannot, and ought not to take
" any notice, inasmuch as I have done nothing to excite those ex-
" pectations and to cause that outlay of money."

And in a subsequent part of his Judgment, the learned Lord says:—" It is undeniable that the property of the Duchy may,
" like that of any other body, or any individual, be so administered
" as to create rights against which those who may have suffered
" them to be established will in vain struggle. *If any lessor so*
" *treats his tenant as to make him believe that he will renew his*
" *term; if, on a faith so induced, the tenant expends his money, or in*

" *any other way becomes a loser, the lessor will be compelled* to give " him such renewal as his own conduct may have led the tenant " to reckon upon, *especially if the thing done by the tenant in any* " *way redounds to the advantage of the Lord,* and that the case of " Floyd *v.* Buckland and Allen *v.* Bower will prove this, were an " authority to demonstrate so *plain a proposition* wanting."

Now, to prove that Sir William Clayton does come within the case put by the learned Judge, is to prove the right of renewal according to his lordship's views of the case; and I think, looking at the title of Sir William, there can be little difficulty in establishing that right.

The case of Floyd *v.* Buckland is most certainly in some respects a totally different case from the present,—It was that of a tenant laying out money in improvements upon *the promise of a lease,* which the lessor afterwards refused to grant, but which the court compelled him to do.

Whether the expectations of Sir William Clayton were groundless or unreasonable, I humbly submit that I have already said enough to disprove, but I shall enter more fully into this in a subsequent part of this argument.

The learned Judge next applies the same observations, almost in terms to the case before LORD THURLOW, of Allen *v.* Bower, before referred to; whereas in that case, which was *between private persons,* LORD THURLOW was clearly of opinion that the injunction ought to be continued, and that *the plaintiff would be entitled to such a term of years as was of the value of the money he had expended in improvements.*

His lordship then proceeds to observe, that " if any thing could " be shown in the conduct, not in the expectation of the lessees— " for that was not enough—but *if any thing could be shewn in the* " *acting of the lessees authorized by expectation—authorized by hopes* " *held out—either upon understanding not made positively, or in* " *words, for he did not require that, but a course of dealing and* " *transacting adopted by the Crown, or those representing the Crown.* " *If the Crown had at any time much more; if it had through a* " *considerable period of time given reason to believe that these leases* " *should be renewed toties quoties by filling up the lives as they* " *dropped, or by extending the absolute term if the time expired,*

" *and upon that faith they not only laid out money, but took the* " *lease for a full consideration; in such a case at law, and much* " *more in equity, if the party takes a lease for* 99 *years, upon the* " *understanding brought in by the lessor, that he should have it* " *renewed at the determination of that period, though he does not* " *lay out a farthing upon it, it is quite immaterial, there is a suffi-* " *cient consideration, he has a right to a renewal if he positively* " *undertook it, and in equity he has the same right as at law,* " *whether he laid out his money on the faith of it or not.*" Let " that be proved, and there is an end of the case. Let that be " proved, and there is a conversion of a voluntary into a compulsory " renewal. Let that be proved in any part, there is no doubt " whatever that this would cease to be a power in the Crown, and " that the parties, lessees, be they three or be they three-hundred, " and the mesne lessees be they one or be they one-hundred, it is " immaterial, they have an entire right to a renewal, and that at " £16. 10*s*. 9*d*. on the renewal, toties quoties."

These are the words of the learned Judge. I cannot go so far as his Lordship, for I must deny the right of the tenant to a renewal, *as a right upon a mutuality;* if he has broken the expectations he gave his lessor, that to entitle him to such a right he would lay out money in improvements, and failed in doing so; nor can I admit that any *legal right exists at all;* but I will take his own position, and insist, that the course of dealing adopted by the Crown and the Parliament has, through a considerable period of time, (as shewn by the title), given reason to believe that these leases should be renewed upon payment of reasonable and equitable fines; large sums of money have been expended by the lessee in improving the estate, and bringing it, even since the last grant, from a rental of £328. a year, to its present rental of upwards of £20,000. a year.

The motives of the Parliament and the Duchy for giving the right of *perpetual renewal* were, that it would induce the lessee to be the more ready to improve the estate, by which means the revenue of the Duchy would be increased, and on that view they were motives of interest; a full consideration has been, therefore, given for the lease with the right of renewal attached. The evidence, I humbly submit, sufficiently proves the facts, and,

assuming that conclusion, then, according to Lord Brougham's view of the case, the lessee has an entire right to renewal. I do not, however, think, with these facts supported, that he is entitled to a renewal at £16. 10*s.* 9*d.* on that renewal, toties quoties, but at the accustomed fine upon the amount of rent received by him, because without these fines the Duchy would be without revenue, and that never could have been contemplated.

The learned Judge very properly observes, that "a man's "estate is not to be taken away from him on surmise;" but the same observation applies to equally the lessee as to the lessor.

I also humbly submit, that the learned Judge travels out of this case when he places this property in comparison with that of the Dukes of Bedford, Norfolk, Portland, &c. Sir William Clayton has a higher right than ordinary tenants would have against ordinary landlords. A principle of dealing and good faith has been established by the legislature; upon this principle Sir William, his ancestors, and all his lessees have dealt with this property.

The comparison, if insisted upon at all, is in direct opposition to the view the learned Judge has taken of this case, because the leases granted by these persons were so granted, not for the uncertain period of a life or lives, but for *an absolute term of ninety-nine years,* as an inducement and encouragement for the lessees to lay out their money and improve the lands, who were under *express covenants* to build and improve. *No sort of expectation* was either held out or looked after for a renewal, nor does any such lessee expect it.

Here is an estate held for near two centuries, under quite a different tenure—here, enormous sums of money have been laid out upon a barren waste, *voluntarily, not under covenant as in the case of the tenants of the Dukes before named;* not upon a long term *certain,* as the leases of the before-named Noblemen have been granted, but upon a lease that might have expired the day after it was granted, but for the tenant-right of renewal; and for the granting of which lease Mr. Clayton not only at his own charges, and without compulsion, covered the land with buildings, but he also paid, *as a consideration,* twenty years of an absolute interest in the estate which he possessed and surrendered to the Duchy, and further purchased up the right of all the tenants. His

vested right so surrendered was larger as a vested right than the interest granted him by the lease of 1777. Would Mr. Cubitt have built Belgrave Square upon such a lease, and have given such a consideration?—would Mr. Burton have built upon the Duke of Bedford's estate?—or, would any of the builders upon the Duke of Portland's, or Lord Southampton's estates, have been content with such a lease?

This is the better way of bringing home Lord Brougham's comparison. Sir William Clayton had in 1777 a vested interest till 1798, independent and without any sort of contingency. The first life died in 1828: so that Sir William Clayton and his lessees have in fact laid out half a million of money *upon a term of thirty years* and to adopt the language of Sir Samuel Romilly, in the case of Iggulden v. May, "who would lay out money in building upon such a lease," but for the tenant-right of renewal annexed to it. According to his lordship's argument, with this they are to be content; while the tenants of the Noblemen named by the learned judge, are in the enjoyment of leases for ninety-nine years certain, at fixed ground rents. *This is the strength of the comparison,* and any conveyancer must be convinced of *its value.*

Upon the long dealing and good faith established by the Parliament, this outlay was made, and has been continued by the lessees to the present time. What the intention was of the contracting parties at the time of the last grant, is sufficiently evidenced upon the face of the title. The Act of Parliament obtained by Mr. Clayton *previous to obtaining that grant,* fully explains the intention, and expressly empowers Mr. Clayton to enter into a covenant in any leases to be granted by virtue of that Act, "that he would "apply for, and if the same could be obtained on reasonable "terms, procure, such renewal or renewals of the Letters-patent "as should from time to time enable him to complete and make "up the full term of years which he should grant, or contract to "grant." And the Act expressly recognises *the right and benefit of renewal* in Mr. Clayton.

The judges to whom the bill was referred, report, among other facts before shewn, "that the premises were assigned by the "settlement to Trustees in trust, from time to time to renew the

" lease; and they considered it reasonable that the bill should pass " into a law:" and that after the bill had so passed, *the grant was made by the Crown to the Trustee of the settlement, upon the trusts of that settlement; the grant is duly enrolled by the Duchy, and the Crown has bound itself* TO SEE *those trusts performed.* Even a purchaser claiming under one, who claimed under Letters-patent, in which there was a trust, has been held to be affected with notice of that trust, see Dunch v. Kent, 1 Ves. 319. Nor will the case of the London tradesman or shopkeeper, also put by Lord Brougham, approach near or even at all to the present case.

There is not the shadow of a comparison that can with any justice be made;—such leases are without a grain of mutuality.

How stand the facts of this case which the learned judge required to be proved *in order to establish the right,* and which he denies having been proved, viz., " That the course of dealing and transacting adopted by the Crown or its representatives, has, " through a considerable period of time, given reason to believe " that these leases would be renewed *toties quoties,* by filling up " the lives as they dropped, or by the extending the absolute term, " and that upon that faith the lessee laid out his money." Here the learned judge rests the whole question between Sir William Clayton and the Duchy. Now I humbly insist, that the whole title is one series of these dealings and transactings as I have made appear. The period runs over near two centuries, and upon the faith of the tenant-right of renewal, the lessee has by an outlay of money, increased the value of the estate from £250. to £20,000. a year.

I don't think it of importance for me to make any observations in following the learned Judge through his remarks upon the title of the Duchy. The letters-patent of Edward III., and the rights of the Duchy of Cornwall under it, will be found at large in the Prince's case, 4 Coke's Rep. 145. See also Lomax *v.* Holman, 1 Ves. sen. 294.

Lord Coke sagaciously observes upon the charter granting the Duchy to Edward the Black Prince, and creating him Prince of Wales, that in this charter there is *a great mystery,* for less than an estate of inheritance *so great* a Prince *could* not have; and *an ab-*

solute estate of inheritance in *so great* a Principality as Wales (this Principality being *so dear* to him) he *should not* have, and, therefore it was made sibi et heredibus suis regibus Angliæ—that by his decease, or attaining to the Crown, it might be extinguished in the Crown.

The learned Judge then considers the case to be exactly the same with that of *a private person* exercising power of leasing, "in "such a way as seldom to make any change in the lessees, *so long* "*as they performed their covenants, and continued to cultivate, to* "*mine, or build..*"

Looking through the whole of this title, for near two centuries, up to the time of the last grant inclusive, I find *no one covenant from the lessee to cultivate, or to mine, or to build.* All is voluntary on the part of the lessee. The due payment of the ancient rent seems to be the burthen of each grant, and the renewals of the leases to be that of each Act of Parliament. Nay, so much did the Parliament intend that the perpetual estate should be in the tenant, so as to encourage him to improve the lands, that it is enacted, "*That no man do pay any fines for alienations of lands holden of the King, as of his Duchy of Cornwall.*" See petitions to the Commons, and their answers, Rolls, in the Tower of London.

The learned Judge then proceeds to say, "That this case is in no one particular distinguishable from the case of very common occurrence, where *a private landlord has, from motives of kindness, allowed the same families long to farm his land, or, from motives of interest, has granted long leases,* to encourage mining, building, or other speculations, demanding great outlay of capital, and has renewed, from time to time, the term for such purposes originally granted.

I humbly insist, that this case is in every particular distinguishable from those first put by the learned Judge. I see no motives of kindness throughout this title operating upon each successive renewal. I see nothing but sterling money *as a consideration for the granting an acknowledged right.* I consider that the Acts of Parliament operate as covenants would operate between private persons.

The second case put by the learned Judge, as arising from motives of interest, speaks for itself, when compared with the present;

but, continues his Lordship, "*there has been nothing done in this "case to excite the expectations and mislead the tenants into expen-"diture;* and there exists no power of perpetual renewal by any "portion of the title that he could perceive to be in the Duchy."

From what I have shewn, can it be for a moment denied, that *every thing was done that could be done by the Duchy officers,* as well as by Parliament, at the time of the grant, to the trustee of the settlement of Sir William Clayton, *to excite the expectations, and mislead him and his sub-lessees into expenditure.* The Duchy even went so far as to grant a term of years differing from all preceding grants, *for the express purpose* that Mr. Clayton might grant a 65 years' term or more, for building purposes, which his right of renewal would enable him to make good, and which is so forcibly explained by the Act of Parliament enabling him to grant those leases; and upon the faith of this right, upon the faith of the title which I have shewn; Sir William Clayton granted building leases to his sub-lessees, and granted them covenants of renewal, so as to make up the term granted, to which his heir is now liable. I do think that a greater case of deceit and oppression (which are *very mild terms* to use) cannot be found.

I admit that, originally, there existed no power in the Duchy of perpetual renewal; but this power has been, from the time of King James, expressly created, and continued by the Legislature, to whom those lands have long since been given up. This right has been paid for, and been constantly exercised and enjoyed by the present claimant and his ancestors; not as a shopkeeper, holding from father to son, under a private landlord; not as a tenant under the Duke of Portland and the other great landowners named by the learned Judge—*all of whose interests are certain and fixed, and were so at their creation*—but AS A RIGHT CONCEDED FOR VALUABLE CONSIDERATION BY PARLIAMENT. The Acts of Parliament are an admission of this right of renewal, for *without such a right, was a term depending upon three lives, and for which a very large consideration was given, sufficient for building purposes? All the Acts of Parliament declare it insufficient.* Look at all the Acts of Parliament for building upon the Crown lands—are they not all for 99 years certain? As evidence, see the Acts relating to Regent-street, Charing-cross, and the site of Carlton Palace. Then if Mr.

Clayton had no such right, as the learned Judge contends he had not, the Duchy and the Parliament conspired together to commit a gross fraud upon Mr. Clayton and his sub-lessees, by exciting their expectations, and misleading them into so great an expense, upon a supposed right, which they encouraged but did not intend to acknowledge.

The learned Judge then again goes into the history of the Duchy, which I have already said may be found in detail in Coke's Reports, and I humbly submit, that all his comments upon the various Acts of Parliament are directed to the *legal* right, and not to *the equitable.* Sir William Clayton has certainly no *legal right* to a renewal, and therefore all this portion of the learned Judge's argument goes for nothing, sitting and judging *as an Equity Judge.* The right claimed is one *purely equitable,* to which the argument does not extend.

The learned Judge then says, "It was afterwards deemed expedient—indeed it probably was necessary—to give some extension to the leasing power, for the purpose of encouraging builders. As early as 1777, by letters-patent, the Duke of Cornwall (his late Majesty George IV.) had granted to the Clayton family a lease for 99 years; but as the enabling Acts then in force only gave a power of leasing for three lives, these letters-patent would not have been valid had not such three lives also been added as a qualification. This was accordingly done, though it is contended, from *the frame of this grant, and the circumstances of it, that it was intended to be renewed as the lives dropped.* This is only part of the general question now before us, there being nothing in the patent to carry the term beyond the lives of the cestui qui vies mentioned, and nothing whatever of renewal referred to, there being also an absolute want of all power to grant such a lease as is contended for, at that time, to any person or on any consideration."

"Under these Letters-patent the lessees took, held, and built. But in 1793 it was deemed advisable to enlarge the leasing power, and by the Act then passed, upon a recital, that various applications for building leases had been made, and that the parties could not undertake such operations, if they had only terms of thirty-one years or three lives, the Duchy was ex-

" pressly empowered to grant leases for the absolute term of " ninety-nine years on improved annual ground rents. *This Act,* " *from the beginning to the end, says nothing of renewal, but it is* " *equally silent as to the leases already granted for ninety-nine years,* " *determinable on three lives.* It is said indeed to confirm those " leases 'made,' as well as those 'to be made;' but if we were to " admit that it confirms all of them by the use of these words, " they occur in the first section before a single word has been said " of the expediency of granting leases for ninety-nine years " absolute; and it confirms them expressly 'according to the pur- " port and content of the said leases and grants.' So that sup- " posing the words, 'made or to be made,' extend backwards to " grants already in existence. *As to the Letters-patent,* 1777, *these* " *are only validated 'according to the purport and contents,' which,* " *of course, gives the parties, in this case, ninety-nine years determi-* " *nable on three lives,* WITHOUT ANY RIGHT OF RENEWAL."

Here is at one view the construction placed by the learned Judge upon the title of Sir William Clayton.

I have already observed upon the dealings between the parties in 1777,—If, as the learned Judge advances, it was deemed advisable in 1793 to enlarge the leasing power because parties could not undertake building operations, if they had only terms of thirty-one years or three lives, with what justice is Sir William Clayton held to a lease specifically for three lives, after he had undertaken and completed such operations?—I would ask, why did the Duchy officers grant the lease of 1777 to the trustee of Sir William Clayton's marriage settlement, upon the trusts of that settlement, if they did not intend to recognize the right of renewal? one of the trusts being to renew from time to time. Will any conveyancer tell me that the Duchy has not implicated itself in the execution of the trusts of that settlement, which most certainly they would not have done, but for the right of renewal vested in Sir Wm. Clayton—Is it at all feasible that these officers would have made such a grant in ignorance? Can it be for a moment entertained that they were not well acquainted with the rights of both parties? Would the Judges have made the report before-mentioned, had they not been convinced, *from the evidence,* that Mr. Clayton had the right of renewal? What are the acts of the surveyor of the Duchy, its

acting officer, (who is supposed to know the rights of the Duchy better than any other person,) but conclusive evidence of the right of renewal being vested in Mr. Clayton.

If no such right existed, why did the Duchy enrol the mortgage to this officer, *with all right and benefit of renewal to the lease belonging? and the first building lease I find granted, was contracted for by this officer for a term of ninety-nine years absolute.* I will put it to the learned Judge, that supposing all the dealings of 1777 had been made with a private person, and that money had been laid out in improvements upon the faith of those dealings, would the Court of Equity have refused the right of renewal. My views of the "*true purport and content*" are, that it gives the lessee an estate for ninety-nine years, determinable upon three lives, upon the trusts of the settlement, which carried with it *a right of renewal* that has been adopted and acknowledged by the Duchy.

The Letters-patent of 1777 are part and parcel of those of 1660, and it will be admitted that *length of possession*, not merely of land, but of many rights connected with an enjoyment of land, *will* confer on a person *an indefeasible interest in them*; and all the authorities have established, that *where money is laid out in improvements, it is sufficient to warrant a construction of perpetual renewal.*

His Lordship then again draws a comparison between this case and the tenants of Lord Fitzwilliam in Yorkshire, and of Lord Westminster in Middlesex, where I cannot see *the shadow of a comparison.* The tenants of these noblemen certainly never contemplate a renewal of their expiring leases. I do not know the mode of letting in Yorkshire, but my experience has shewn me, that tenants in general require building leases for ninety-nine years, or at the least sixty-five years *certain*, before they will expend money on building; they expect no greater term, nor is a renewal held out to them; they enter strangers upon the land. They are bound, by strict covenants, to build and improve, and are expected to quit at the end of the term, whereas Mr. Clayton was not bound to build or improve at all.

Comparing these tenants, with Sir William Clayton's title as an argument against his right of renewal is, I humbly submit fighting with shadows.

The learned Judge, as a reason for his decision, says, "*were I "to give judgment against the Crown, I should make every title "throughout the Kingdom shake, and conjure up a fearful group, a "sort of dark fantastic suitors to blacken this Hall, and fill its air "with novel and discordant sounds, uncouth to all learned minds, "and involve the community and all its real property in a maze of "groundless and less pitiless litigation.*"

If this were the only reason of the learned judge, I humbly insist that it rests upon very frail ground, for as there is *no other title in the Kingdom so situate,* the fearful group to be conjured up to blacken Westminster Hall would be confined to the *tenants* of the Duchy, they would form the community; and *their* rights, be they just or be they unjust, would be the only discordant sounds that were to involve, *not* all the real property of the Kingdom, but certainly all the property of the Duchy of Cornwall *similarly situated* in litigation.

The entire host named by the learned Judge viz., "the "Duchies of Portland, of Bedford, of Sutherland, of Cleve-"land, and of Rutland, and all other proprietors, both great and "small, in the towns and in the country, would be bound to renew "at the tenants' good pleasure, if his lordship gave judgment for Sir William Clayton," yet *not one of those proprietors have a single estate or a single tenant so situated, so peculiar as Sir William Clayton and this estate.*

There is no one precedent upon record to govern this case, and the rights of Sir William Clayton being granted, in my opinion would, instead of destroying the relation between landlord and tenant (as held out by the learned judge) strengthen that relation, because *as and when the tenants' leases fell in, the rental of the lessee of the Duchy would be increased so in a just proportion would the fine payable to the Duchy be increased, as often as a life dropped, or as a renewal should be required:* and it is my humble opinion that in Equity, which looks to the intention of the parties, (to say nothing of moral justice,) Sir William Clayton was well entitled to, and ought to have had, the relief he sought.

FOURTH.

On the Fine of £72,000. demanded for renewal.

The payment of renewed fines, and the acceptance of new leases,

is an acknowledgment of the tenure, or, in other words, that *the fee* is in the landlord or owner of the soil. The rent without the fines would not be sufficient to preserve the evidence of that tenure, if rent only were paid, and there were no evidence of renewals or payments of fines. The state of things in such a case would create a presumption of a fee-farm being in the tenant. Now the tenure, that is the fee in the landlord, may be an important consideration in the value of the property, and the renewal fines are the preservatives of that tenure, and the renewed leases the documental acknowledgment thereof. The fine is the principle and essential object, and the renewal is only to enforce the payment.

I believe that I have sufficiently shown what hath been the custom with reference to the fines paid for renewal by the late Sir William Clayton and his ancestors, since the year 1670, and that the average of those fines has been one year's rent, and something more. The fine demanded of the late Sir William Clayton, was, I find, the enormous sum of £72,000., *calculated upon the rental received by the tenants,* and not upon that received by Sir William Clayton, and which amounted to £1,238. a year only.

I really don't think that it requires much argument to shew, upon which rental the fine *ought* to have been calculated, though I humbly insist that *the fine ought to be calculated upon the rental of the estate in* 1777, for to use the words of *Mr.* (afterwards *Lord*) *Mansfield,* in Somerville *v.* Chapman, "the present situation "of the estate is not to be looked at, as the improvements were "in contemplation at the time of making the last grant;" and this mode of calculation was adopted by the Court, in Waston *v.* The Master of Hemsworth Hospital, as I have before shewn.

It does not appear to me that the Duchy officers ever intended to resist the tenant-right of renewal, save by demanding such a fine as must of necessity be refused, and thus they might be quietly enabled to take the estate. This further appears to have been contemplated by the extraordinary saving clause in the Act 1st and 2nd William IV. cap. 5., which saves the rights of all persons *except the King and* HIS LESSEES; *but as against the lessees, such a saving is repugnant and void.*

After all I have said and shewn as regards the rights of Sir

William Clayton, such a fine as that demanded must be considered by every honest man as exorbitant and oppressive—against all justice, legal, equitable, and moral; and, certainly, no brilliant in the dignity and honor of the Crown. I am informed that the whole income received by Sir William Clayton from the estate, would not even have insured a greater sum than £20,000. upon the death of the first life, and that so far from the Duchy considering it had any interest in the estate, beyond the accustomed fine and the ancient rent, at the death of the first life, they had not even any plan or particular of the estate, nor did they know any thing about it.

Unfortunately the loss occasioned to those whose cause I am called upon to advocate, by the decision of the learned Judge who heard this case, is not confined to them alone, but *has entailed ruin upon hundreds of Families.* Sir William Clayton and his lessees pinned their faith to the Parliament,—to Sir William's right of renewal—to the honor, dignity, and justice of the Crown. Sir William covenanted with most of his lessees, that he would pay the renewal fine, from time to time, without requiring contribution from them, and that he would give them the benefit of each renewal until their terms had run out, when the income of Sir William Clayton becoming increased, the fines to the Duchy, upon renewal, would also increase in a due proportion, and it was only by means of this covenant that Sir William Clayton could let the lands. Many years elapsed, as I have shewn, before the estate could be let. The dates of the leases are from 1786 to 1799, and the under-leases are of course of a still later date.

From the papers laid before me, I find that the houses were erected about thirty-five years ago, at a time when materials were at their highest price, and when wages were equally high, and upon an average of the whole estate, the houses have not produced to the *lessee* £5. per cent. per annum upon the first expenditure, and that capital is lost.

When this fine was demanded, Sir William Clayton, in order to save his tenants from the impending ruin hanging over them, called them together to see what could be done by dividing and apportioning such a fine, but they found it perfectly impracticable to raise such a sum upon the whole estate.

These facts, it appears, were represented to the Duchy officers; had they been as fairly represented to the Sovereign, I am sure the grievance would have been instantly redressed. The fountain of honour and grace would not have wantonly consigned hundreds of his subjects to ruin, as a reward for the extraordinary benefits they have given to this estate. What was the conduct of the officers of the Duchy upon these representations being made to them, when they at once saw the ruin and misery with which the tenants were surrounded? Did they even offer relief? Yes, they offered (upon what authority, or with what legality, I cannot discover,) to renew to *one class only* of the Lessees, or the occupiers of the houses, upon the immediate payment of a considerable fine for one life, and reserving a ground rent; and my instructions are, that the Duchy officers, since they seized the estate, have granted leases of nearly the whole of it to strangers, *for the life of the Princess Victoria, taking fines and reserving a small ground rent.*

I am not called upon to give an opinion upon the value of these leases, should a demise of the Crown take place, or should a Duke of Cornwall appear. The persons who have taken them must look to that.

Upon the whole, therefore, relying upon these reasons and authorities, I humbly insist, on behalf of the younger children of the late Sir William Clayton, who are devisees of this Estate under his will, that they are entitled to a new lease, according to the custom that has so long existed, at the ancient rent, upon the payment of the usual fine to be calculated upon the rental of the estate at the time the last grant was made.

This estate has long since been given up to the Parliament, which has dealt with it ever since, and has repeatedly redressed the grievances of the tenants by granting bills of relief. The Parliament was, therefore, the proper place that Sir William Clayton should have applied to in the first instance, and I now advise a petition to be prepared for the Parliament, stating the whole facts of this case, and praying an enquiry and relief, and let notice be given of such petition to the Duchy Officers.

T. G. WESTERN,
Middle Temple.

1*st August*, 1835.

J. BETTS, Printer, 7, Compton Street, Brunswick Square.

FURTHER OBSERVATIONS

BY MR. HAINES.

Mr. Western's opinion seems decidedly in favour of the tenant-right of renewal, on a *reasonable fine;* but then, he says, it is not a legal right, but an equitable right only. Now, with all due submission to Mr. Western, I still contend that the estate and interest intended to be given by the Acts to the tenant is a *legal vested right to have his lease renewed* whenever (in the language of the Acts) he may desire it, and that without the payment of any fine. My reasons for thinking so are,—1. The necessity which existed for giving the lands up to the public, in order that they might be improved, it being evident that they must have remained barren in the hands of the Duchy.—2. The actual giving up of those lands by the Duchy, by their own Chancellor, Sir Edward Coke, to the Parliament, for that purpose; on condition that the same rents should be reserved to the Duchy as were theretofore reserved to them, together with all rent which could be got for the waste lands, which had never before yielded the Duchy any rent.—3. The absolute necessity of giving the tenant the largest possible interest that could be given him, for the purpose of encouraging him to lay out his money and industry in building and improving.—4. The declaration made by Parliament of their intention to give the tenant a *perpetual estate* for that purpose.—5. The following up of such intention by the Legislature, by enacting that all leases made and to be made should be good against the Duchy as long as ever there could be found any person to inherit the Duchy, not only under the charter of Edward the 3d, but under any Act of Parliament or other limitation whatsoever; thus creating the

perpetuity intended to be given to the tenant.—6. And providing that such perpetuity should be had and enjoyed by the tenant, by means of leases, renewable at the will of the tenant, whenever he might desire such renewal.—7. The prescribing the mode and manner of renewal, and the terms and conditions on which the leases were to be renewed; i. e. that they should not be made for more than 31 years, or three lives, and *at a certain rent only, without the reservation of any fine on renewal.*—8. That it was the certainty of estate and interest which the tenant had given him by the Acts, that were the motives for improvement.—9. That any fine whatever (especially an uncertain fine) would effectually have frustrated the end and design of Parliament; for no tenant or person would have expended their capital on such an uncertainty. Fines, therefore, unless they had been very small and fixed, are totally inconsistent with the spirit of the Acts, namely, the encouragement to build and improve, particularly after the tenant has bought and paid a full price for the right of renewal.—10. The fines which have been taken, originated in exaction on the restoration of Charles II., when every oppressive measure was used to raise that King money to carry on his government, and they were received for 100 years afterwards by the Government, and applied to the public service of the State; which shews, that fines were never due of right to the Duchy, because, if they had been, they would have formed part of the constitution or law of the 21st James I., which was established by Parliament for the regulation of this new tenure as well as the rent, was made certain and fixed.—11. That the fines have hitherto been submitted to through exaction, and because the property has been improved progressively by the tenant, who thought it his duty toward the King and Government at that time to submit to an exaction which the necessity of the State seemed to justify; still, that submission, and continuing to pay a reasonable fine to the present time, cannot convert a wrong into a right, or give the Duchy any right to demand any fine, particularly as such fine was not originally imposed or exacted by them, but by Government, to whom the lands had been given up, and under *whose controul they now are, or ought to be,* the Duchy not only having given up the lands, but all power and authority over the tenants, save as to the receiving or recovering the rents reserved to

them, in performance of the condition on which the lands were so given up. Supposing, for instance, the Duchy officers were to be called upon by Parliament to shew their authority to take fines on renewal, they must (since there is a law establishing a constitution for the regulation of the tenure of those lands) go to that law or constitution for their authority. They cannot plead custom against what is established as the law of the constitution or tenure, particularly a wrongful custom, inconsistent with the spirit of the constitution, as I have before shewn; nor can they support a custom which had its origin in exaction, against that law. The estate which the tenant takes is such an estate as was to be sufficient to encourage him to outlay his money in building and improving; and this estate is *absolutely vested* in him by the Acts for that express purpose. Now I say, as it is admitted by the Legislature that a 31 years or three lives is not sufficient, it must be an estate that would be sufficient, and that estate can have no other name than the *legal right* of the tenant to have his lease renewed, and which legal renewals are recognized by the Acts themselves, as well as the tenant's exercise of that right. Thus I humbly submit, that I have proved that the Acts clearly shew the creation of the right of renewal in the tenant, at a certain fixed rent, but no fine; and that the estate given to the tenant is the legal right of renewal, which is the good, fixed, and indefeasible estate, legally vested in him by the Acts, and that, too, for the express purpose of encouraging him to lay out and expend his money and industry in building on and improving the property, and for which legal right of renewal the tenant pays a valuable consideration on his contracting for and taking his first lease under the constitution, subject only to the legal rents and covenants first fixed and entered into under its provisions, rules, and regulations originally established and ordained for the government of this property, which, as far as respects all the beneficial use and occupation of the lands in perpetuity, becomes vested in the tenant the moment he purchases and takes his first lease under the constitution. I think the renewal of the leases was established for the benefit of the Duchy, in order that they might come at their rent, and not so much for the benefit of the tenant, further than as a means by which he is to have and enjoy the perpetual estate given him by the Acts. If, therefore, the

Duchy refuse to renew with the tenant, then has the tenant a right to hold possession against the Duchy, without payment of any rent, because he has an indefeasible estate, which the Duchy by no means can deprive him of; nor is it in the power of any Judge to deprive him of it—otherwise his estate would not be an indefeasible estate. The constitution of the Duchy, as established by the statute of James, is the law which binds all the Judges of the land, and on which their decisions, in all matters between the Duchy, or rather between the Parliament and their tenants, are to be regulated.

The grand error into which all the learned Counsel (as well as the learned Lord, who have had to advise upon, to argue, and to adjudge this case), have fallen into, seems to me this: they have passed over the true sense of the enacting clauses in the Acts, and have only been paying attention to the titles of those Acts (which are calculated to mislead the judgment, and have nothing to do with their construction), in connection with the proviso. They have taken it for granted, that those are Acts to enable his Majesty to make leases only for 31 years, or under, or for one, two, and three lives, instead of, for giving the tenant a perpetual vested estate and interest in the property, in order to effect a public good —the building upon and improving the same. I beg to call those learned Gentlemen and the learned Lord's attention to the enacting clause, and there they will find, that the first thing the Legislature does to effect the measure intended, is, to put the stamp of perpetuity upon every grant, by making all leases good against all succeeding Kings and Dukes (not for the time being, but) who shall, *at any time thereafter,* have, inherit, or enjoy the Duchy; provided those leases are not only made, *but renewed* from time to time, upon such terms and under such rules and regulations as are ascertained and limited by the Acts. And it follows, that as long as such original leases are made strictly under those provisions, and as long as those rules and regulations are complied with, so long are they leases renewable in perpetuity. It would be a very hard case indeed, unknown to our laws, and against every rule of justice, if, after a man has bought and paid a valuable consideration for an estate, he were not to have and enjoy it, but that it should be taken away from him by the grantors, after he had spent half a

million of money in the improvement of it; yet so it has happened, that after all this, and after this estate has been vested in the tenant by an Act of Parliament, for the purpose of encouraging such outlay, the Duchy Officers have thought proper (without considering that the property had been given up to Parliament at the time the constitution was so established, and that all the interest they now have payable out of this property is their £16. 10*s*. 9*d*. a year, and no more) to seize upon and take forcible possession of this property unlawfully, and to grant it out to others, for the purpose of raising money, for his Majesty's use. I say it is a direct violation not only of the constitution of the Duchy, as by law established, but that it involves one of the dearest principles of the constitution of England—the protection of our properties; and I think, from what I have shewn, it will be evident, that if such a principle of spoliation could be maintained, it would involve the country in utter ruin, and that every nobleman's estate in the land would be liable and subject to be resumed by the Crown.

Now, in order to shew there has been a fair and *bonâ fide* consideration given for this right of renewal, so purchased by the Clayton family, I submit the following Statement:—

	£.	*s*.	*d*.
In 1666, there was paid to Lord Loughborough, by Morris and Clayton, on mortgage, previous to the purchase.....	1,800	0	0
1670. A fine exacted by the Officers of the Government at this time on renewal	288	0	0
1686. A composition exacted for the restoration of the increased rent (which had been taken contrary to the Act) back to the ancient rent of £16. 10*s*. 9*d*. a year	234	4	
A fine, exacted at this time, on a renewal in reversion, at the ancient rent, for the service of the State....	532	6	0
This is the sum it cost, to make it a valid lease under the constitution	2,854	10	0

To which may be added,

1699.	Another fine exacted, for the like purpose, on a renewal in reversion, of..	350	0	0
1732.	Another fine exacted, for a renewal in possession, of	352	0	0
1747.	Ditto.....ditto.....	354	0	0
1765.	Ditto..in reversion..I believe about..	560	0	0
1777.	Eighteen years surrendered when the last letters-patent were granted, and when the rental stood at £358 per ann.	468	0	0
		4,938	10	0

So that it appears, by the time the rental amounted to £358, the estate had cost the Clayton family £4,938. 10*s.* including the fines improperly exacted from them—saying nothing about the £6,000 borrowed to carry into effect the building speculation, or the value of the 18 years surrendered, or the interest of the money thus paid.

Supposing the letters-patent of 1777 had been the very first transaction that ever had existed between the Duchy, or, I would rather say between Government and the Clayton family (for the contract, it seems, was with the Lords of the Treasury), then I would contend, that it being a good lease under the constitution so established by the 21st James, by reason of all the provisions in that Act having been strictly complied with, the tenant is entitled to his renewal in perpetuity, because it is a valid lease under the constitution. And if it is considered to be an original lease under the constitution, independent of all the former leases, by reason of the change from a 31 years' to another description of lease, warranted by the constitution, then I say a *bonâ fide* valuable consideration has been given for the purchase of the right of renewal under the Acts, £468 being nearly equal to 30 years' purchase on the rent of £16. 10*s* 9*d* a year, which is the whole interest the Duchy have ever lawfully had in the estate ever since the year 1686; for the Acts fixed this rent on this particular property in question, and the Duchy being thereby barred from ever increasing

it again, shews the tenant was considered as having such a vested interest in the property, as he never could be deprived of by them, or by any judgment or decision, and not even by Parliament itself; his estate being an indefeasible estate, not liable to be defeated, not liable to be cut off, irrevocable, and subject only to the payment of £16. 10*s*. 9*d*. a year.

It surely never can be contended, that because the Clayton family have voluntarily chose to submit to those exacted fines, when the necessity of the State seemed to justify their demand, and because they felt it their duty voluntarily and cheerfully to pay those fines, necessity requiring every person to make some sacrifice towards the support of the State, in order to enable the King to carry on his government;—surely, I say, that fines, having their origin under such circumstances, ought rather to be abolished altogether, instead of being multiplied by an exaction upon an exaction to such enormous sums, when it is evident there exists no legal right in the Duchy to take any fine at all.

The Officers of the Duchy are under a great mistake if they think they have any such power as they have presumed to exercise, in thus arbitrarily seizing upon the Clayton property, and granting it out to others. They are nothing more than the mere instruments, under the controul of Parliament, to put in motion the machinery of the constitution, whenever the tenants desire their leases to be renewed. This the Duchy Officers seem to have been aware of, and, therefore, have got those Acts passed since the 16th Geo. III., in order to get the property back under their own controul, and to oust the lessees from all benefit of the constitution, and for whose benefit it was in the main part established.

It seems to me that, for the purpose of getting those lands improved, that the legal estate (so far as respects the perpetual and beneficial use and occupation of the land) was intended, and is completely taken out of the Duchy, and absolutely vested in the tenant, under and by virtue of the Acts, and that, too, expressly for the purpose of encouraging the tenants to lay out their money in building and improving. That the leases are that part of the measure established and ordained for the benefit of the Duchy, in order to secure to the Duchy the rents directed to be reserved to them by the Acts, and not to limit the tenants' interest to the

leases, but the means by which the tenants were to have and enjoy the perpetual estate so given to and vested in them by the Acts.—It seems to me, that Parliament has power at any time to altar the limitation of the Duchy as it now stands, but subject, nevertheless, to the rights and interests of the tenants. The Parliament have controul over the property (so far as the rights and interests of the tenants are concerned); the rights and interests of the Duchy therein are, the fee, the manorial rights, and royalties, and the rents reserved to the Duchy. There is a contingent reversion in the Duchy dependant on the tenant's neglect or refusal to renew, on having a lease tendered to him for that purpose, made strictly within the provisions of the Acts; and in such case, if he refused to accept such a lease, he would incur a forfeiture.

The Acts which are passed since the 16th Geo. III., under which the last letters-patent were granted to the Clayton family, can scarcely be called Acts of the Parliament, because, as it appears to me, that those Parliaments have been grossly imposed upon by the Officers of the Duchy, who, possessing a knowledge of their own constitution, so established for the benefit of the tenants, and seeing that the Parliaments of late had lost sight of it altogether, have taken that advantage, and procured Acts to be passed (which ought to be called Acts of the Duchy Officers, and not Acts of Parliament) being repugnant to, and passed with an intention to destroy the tenant's vested rights and interests under the constitution, and to shut them out of the benefit thereof altogether,* and to get the property back again under their own controul, so as to enable them to seize it into their own hands, to the ruin of the tenants, lessees, and all claiming under them, dealing out ruin and destruction to hundreds, nay thousands of families, who, by their outlay and industry, had made a comfortable provision for their future support, and that, too, after a peaceable enjoyment, by themselves and their ancestors, under this constitution, for upwards of two hundred years. Those Acts, I say, which have thus been unduly obtained by the Officers of the Duchy, are in total violation of all former Acts, and ought immediately to be repealed and abolished from the statute-book; for as long as they

* See the Saving Clause in the last Act.

are permitted to remain there, so long they will reflect disgrace on those who thus procured them to be passed, and record an omission of duty on the Parliaments who passed them, and are, in my humble opinion, a general violation of the rights and properties of his Majesty's dutiful and loyal subjects, which ought to be protected by Parliament, by a strict inquiry into the subject, and by an application of a proper remedy to the evil complained of. Every tenant, therefore, of the Duchy ought immediately to petition Parliament for relief, or they may have their estates in like manner as unjustly taken from them, and pray for a restoration of their ancient vested rights and privileges, granted them under the original constitution, and continued down to them till the Officers of the Duchy began to concert means to destroy them; and I am confident, when his most gracious Majesty comes to be better advised, he will promote such inquiry.

J. H.

August 19th, 1835.

AP ACN GGc
Case between Sir William Clayt
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